Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
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[*Latin ed. p. 1*]

A COMPENDIUM CONVENIENTLY ARRANGED AND ILLUSTRATED OF THE ACTS OF THE HOLY SEE, OR, The legal and more solemn acts emanating directly from the Supreme Roman Pontiff: including those acts which can be publicly known by law, whether they are Decrees, Instructions, Responses, or other similar matters: especially, expositions and resolutions of cases from the various Sacred Congregations of Cardinals, carefully compiled to promote a thorough understanding and observance of ecclesiastical law: and finally, other legal matters, by which those things which may present difficulty in the aforementioned acts are suitably explained, or which further contribute to the knowledge of existing law: for the benefit of those who diligently study the laws of the Church, and who labor diligently in the governance of the Christian flock, or in cultivating the vineyard of the Lord. STEREOTYPE EDITION, Volume VIII. ROME, FROM THE PRINTING PRESS OF THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, 1908. Reprinted with the permission of the Libreria Editrice Vaticana. JOHNSON REPRINT CORPORATION, 111 Fifth Avenue, New York, N. Y. 10003. JOHNSON REPRINT COMPANY LTD., Berkeley Square House, London, W. 1.

[*Latin ed. p. 3*]

FROM THE HOLY CONGREGATION FOR THE DISCIPLINE OF THE COUNCIL OF TRENT, March 28, 1874. Summary of the case. In March of 1872, a priestly position became vacant in the town of the Diocese of F, specifically the Archpriestly benefice of the Church of Saint Mary Assumed into Heaven, which included the care of souls. Consequently, the Most Reverend John Andrew C., the patron of that benefice, presented the priest Francis B. to the Bishop, so that he might undergo a preliminary examination and, if found suitable, receive the institution. However, this priest, being manifestly unsuitable, was rejected by the Bishop, and the Bishop's decision was confirmed by the Most Holy Office to which he had appealed. Therefore, a second nomination was made, which was granted to the priest Joseph F, a canon of the Collegiate Church of Saint Mary Major in the town of P, within the same Diocese. As soon as the rectors of the municipality, the Chapter of the Church of Saint Mary Assumed into Heaven, and several citizens received notice of this, they presented a petition to the Most Holy Office, stating that the priest F. was a foreigner, belonged to a family against which many complaints were made, did not enjoy any reputation for merit, and that, if he were to obtain the Archpriestship, all those evils that the last holder, also a foreigner, had brought about over eighteen years would be renewed. Therefore, they earnestly implored that the foreigner be rejected, and that a priest from the same town, S., be appointed, who, through his merits, could gain the trust of the clergy and the people. In response to

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these petitions, the Bishop, having explained the facts as narrated above, added that, although he had repeatedly requested the Most Reverend Patron to ensure that, before making a presentation...

[*Latin ed. p. 4*]

4. The patronage, at least of the parish, should have been consulted; however, it obtained as much as it could. In the meantime, the Municipality, with undue zeal, undertook to prove that the Prince C. could present no one who was not from the town of S.; indeed, the municipal Syndic went so far as to deny the Prince the very right to nominate, claiming that the archpresbytery had either been granted freely or had lapsed, or that, if one still wished to call it a patronage, this right belonged not to the Prince, but to the Municipality. Therefore, he issued a protest against the patron; to which the Prince responded with a counter-protest, earnestly imploring that his most ancient rights be preserved, intact and secure. With these matters in hand, a decree was issued from the Secretariat of the Holy Congregation, ordering that the case be placed on file and that the Bishop be notified, so that he might admonish the parties and set a proper deadline for them to present their rights. The Bishop acted accordingly, and from the side of the Municipality, two documents pertaining to the matter were presented; of which more will be said below. Hence, the case was presented under the following doubts. A synopsis of the discussion. THE RIGHTS OF THE MUNICIPALITY. The Holy Council of Trent, Session 25, chapter 9, on Reform, states that the right of patronage can be proven "either from a foundation or endowment, which is demonstrated by an authentic document and other necessary proofs, or even from repeated presentations over a very long period, which exceeds human memory, or otherwise according to the disposition of the law. In those persons, or communities, or universities, in which this right is usually presumed to have been acquired rather by usurpation, fuller and more rigorous proof is required to demonstrate the true title, and the proof of an unforgettable period will not suffice for them unless, in addition to the other necessary presentations, it is also proven by a continuous period, of at least fifty years, which has all been carried out, and is proven by authentic writings." Cardinal y best explains what those more powerful persons are, who are presumed to have usurped the right of patronage.

[*Latin ed. p. 5*]

JURISDICTIONAL PATRONAGE 5 Concerning Lucca, p. 1 of the treatise on canon law, discussion LVIII, numbers 24 and 25. "Two persons are considered powerful, those who possess temporal jurisdiction in the place where the benefice is located, although that jurisdiction is not full and absolute, but subordinate, as is the case with feudatories and barons... And in this matter, the beginning is considered, namely, whether at the time

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of acquiring the right of patronage and presentation, he held jurisdiction in the place, even if he subsequently ceased to hold it." Therefore, since the Prince appears to be among the more powerful persons noted by the Council of Trent, in order to claim the title of jurisdictional patronage, he must present documents establishing the foundation or endowment, and if these are lacking, as in our case, he must necessarily, according to Trent, provide two things: first, he must prove that the right is immemorial, with the conditions traditionally attached, as found in the common Glossa in chapter 1 on prescription, in paragraph 6, which Tondut collects in *Quaestiones de Beneficiis*, book 1, chapter 104, number 12, "there." For the proof of immemoriality, it was necessary to have witnesses testify to having seen it for forty years before the lawsuit, and that they had heard it from their ancestors, who had heard it from their ancestors, and that neither they nor their ancestors had seen or heard anything to the contrary; and they must also testify to the public voice and reputation, "these words were and are." Secondly, it is necessary that, on the part of the Prince, it must be established by authentic documents of repeated and continuous presentations, and the effect of these presentations for at least 50 years, as is evident from the *Rota* in the decision of March 17, 1665, before Bevilacqua, which is reported and extensively explained by Cardinal De Luca in Book XIII, discussion III, on canon law. On the contrary, the Municipality will prevail in every point if it can demonstrate that these two things are not at all verified. With these premises, the Municipality argued that after the Council of Trent, it could no longer be a matter of a possessory judgment in matters of jurisdictional patronage, even if the canonical institution is discussed, but that the matter must always be considered as a petition, as Fagnanus rightly observes in Chapter on Consultations on canon law. Therefore, the Prince's recourse to such a remedy was in vain.

[*Latin ed. p. 6*]

6. The ultimate status of patronage belongs to him who is its patron. Indeed, it is certain that Prince C. lacks any legitimate title of foundation or endowment to prove his right of patronage; for, if the benefices of the town of S., including the Archpriestly benefice, were founded by pious testators, and if, in the year 1609, the Prince established a small fund only to increase the endowments of the benefices, without, however, reserving any right of patronage for himself, then, since the right of nomination, which the Prince exercised, does not originate from any canonical title, but only from a feudal and baronial privilege, which, having already been abolished, has failed, it is clear that the right of patronage either belongs solely to the Municipality, from which, indeed, those baronial properties were originally established, by which the privilege of patronage was inherent, or that, with the right of patronage completely extinguished, the Bishop has become the free collator. Given this, it is clear that the citizens of the town are acting

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in vain by appealing to the Prince regarding immemorial and continuous presentations, in order to claim a better title. For, as has been shown above, all legitimate title of foundation or endowment is lacking; nothing remains of the Prince's favor except the privilege, from which it is said that the right of patronage arises. Furthermore, it is known that the privilege was revoked by the Tridentine Session 25, chapter 9, concerning Reform, and that after the Tridentine Council, such a privilege is of no avail, unless it has been granted by the Pope with a derogatory clause of the Council itself (Reiffenst. lib. 3, decr. Tit. 38, n. 12, concerning Patronage). With this established, neither immemorial nor continuous presentations are of any help; for they always originate from a tainted root, or from a vicious beginning; indeed, no antiquity, even of a thousand years, is sufficient, as De Luca says concerning the law of patronage, discourse 57 (Genuen.); in *Praxi Archiep.*, chapter 63, n. 5 (Gconzal.); *gloss.* 18, n. 48 and following, and others throughout. Therefore, there is no reason why the Prince should still claim the right of patronage; neither because of the privilege, since it was abolished by the Tridentine Council; nor because of immemorial and continuous presentations, since they originate from a vicious beginning.

3. } 4. PRINCE C. But, these deductions were vehemently opposed by the Most Excellent Prince, who observed, above all, that... (The passage is incomplete).

[*Latin ed. p. 7*]

Regarding the matter of patronage, that is, the right of presentation to a benefice, in which, according to the opinion of doctors of law and the judgments of tribunals derived from Chapter 19 of the Consultations on Canon Law, only the most recent state of affairs is to be considered. Furthermore, this most recent state of affairs favored him, hence he believed that, from his presentation and consequently from the right to grant institution in this judicial seat, there could be no doubt, provided that the qualifications of the candidate did not present an obstacle. However, even if the petitioner were to pursue the lawsuit, his rights were made even clearer. Indeed, he pointed out that the argument of the Municipality was not supported by any document whatsoever, and therefore should be rejected as entirely gratuitous; moreover, upon closer examination, it was clear that the Municipalities were deprived of any legal title to prevent them from initiating a lawsuit and establishing a judicial process. However, the Prince maintained that all the arguments of the opposing party should be dismissed, since he possessed an uninterrupted possession, both before and after the Council of Trent, from which, indeed, the right arises to allege a better title to the benefice. In truth, from the year 1528, even before the Council of Trent had been held, presentations had begun, which were always continued, and the right passed down to the last possessor, for a period that exceeds three centuries. Indeed, in the year 1612, a case was brought regarding this very

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patronage between the Prince Philip V and the Bishop F., and, according to the judgment of the General Vicar of the Bishop, the Prince emerged victorious. Furthermore, from this most ancient possession, it can be deduced that the right of patronage in this case did not arise from a feudal privilege, as the Municipality claims. Indeed, feudal privileges were abolished by the Council of Trent, Session 25, chapter 9, on ecclesiastical reforms; whereas, on the contrary, the right of patronage to grant an archiepiscopal benefice was exercised openly, peacefully, and without any interruption or contradiction, both before and after the Council of Trent, and continues to be exercised until our own time. Therefore, the two requisites necessary to prove the right of patronage clearly appear to be verified in this controversy: namely, an uninterrupted possession, from which even the opposing party cannot object; and continued presentations, for at least a period of fifty years.

[*Latin ed. p. 8*]

From what has been said, it is abundantly clear what effects the patronage has had. Regarding the second question, concerning whether the institution of the priest, Father [name not given], was valid, this was contested on two grounds: either because the patron could not nominate him, since he was a foreigner, or because the nominated candidate should have been rejected as being unsuitable. This hinges on whether there was a defect of power in the patron, and a defect of required qualities in the nominee.

Regarding the first point, the municipal representatives attempted to prove their case with two documents. The first states that Mark Anthony C. gave his consent in the year 1609 that the simple benefice of the church of St. John the Baptist, a parish church, should be united, and that its goods should be divided among the priests of that parish church, reserving the right of patronage for himself. Indeed, the municipal representatives argued that the words "that the goods should be divided among the priests of the same parish church" clearly indicated that outsiders should be excluded. However, the patron argued that this argument was readily refuted.

In the second document, drawn up in the name of the municipality and the chapter, several witnesses were cited, including Innocent Mary P., a priest and dean, aged 74, and Michael B., aged 83, who testified unanimously that they had heard from their elders, and that others had heard from their elders, that at a certain convention held in the year 1609 between the Prince and the municipality, it was agreed that the first presentation to the archpresbyterate could only be made of a priest from the town of St. [name not given]. They asserted that this was most clearly confirmed by a testimony from the Episcopal Curia, from which it was shown that for more than a hundred years, the parish priests of this church had always been natives. However, the official in charge of the Prince's archives testified

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that no document existed in his archives from which it could be shown that the patron was bound by the obligation to present a candidate from the municipality to the archpresbyterate, under penalty of nullity of the presentation, but rather the contrary was evident if the last status of the benefice were considered, provided that the last holder was a foreigner.

Furthermore, the two documents produced by the municipalities did not seem to have much weight, since, on the one hand, the first confirms the head of the controversy for the Prince, because the exercise...

[*Latin ed. p. 9*]

The advocates for the right of patronage attribute nine reasons to it, and they demonstrate a title of endowment with an explicit reservation of the right of patronage. They add little support to define in favor of the Municipality the second part of the controversy. Therefore, it remains to briefly examine the qualities of the Priest F., from which it may be determined whether the institution should be granted to him or denied, so that the Prince may not be unduly restricted in presenting priests to the parish of S. Indeed, the Municipality asserted that this priest would be a very poor shepherd of souls, both because, as a foreigner, he would follow the wrong examples of his predecessor, and because he belongs to a family so devoid of religion that, recently, his uncle, upon his death, rejected all signs of piety and caused great scandal. On the other hand, this priest presented a good testimonial from the Rector of the Seminary in which he completed his studies, and the Bishop has shown no opposition to him. With all these things explained, the proposed questions are to be resolved. I. To whom, and in what manner, does the right of patronage belong in this case? II. Is the presentation of Priest Joseph F. to be upheld, so that the institution should be granted to him in this case?

RESOLUTION. The Sacred Congregation of the Council decided on March 28, 1874: To the first question, affirmatively, in favor of Prince C. and furthermore. To the second question, affirmatively, and the institution should be granted to Priest F., provided that he is found to be capable and suitable by the Bishop.

THEREFORE, IT IS UNDERSTOOD: I. The Council of Trent, in Session 25, chapter 9, on reform, expressly revoked all rights of patronage acquired by occupation or by usurpation. II. To prove the right of patronage, where usurpation is alleged, fuller and more exact proof is required, according to the prescription of the same Council.

[*Latin ed. p. 10*]

10. OF PATRONAGE. Therefore, patronage in the case of powerful individuals, or those suspected of abuse, or who are not clearly informed of the title of the foundation or endowment, must be proven for an unmemorable length of time, together with continuous presentations, and the effect of

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lotteries, for at least fifty years.

IV. A decree of the Council, lacking the aforementioned rigorous form, which affects the rights of powerful individuals, also affects possessory rights.

V. By the name of "powerful individuals," are understood all those who have temporal jurisdiction in the place where the benefice is situated.

VI. The bad reputation of some families should not prevent their presentation for a benefice, even a parish benefice, from being considered, provided that they are found to be capable and suitable by the Bishop.

[*Latin ed. p. 11*]

11. OF CANONICAL FRUITS. May 9, 1874. Summary of the case. In the Collegiate Church of the city of P., an ancient custom had existed whereby the surviving Canons and Beneficiaries would receive the revenues of vacant benefices and distribute them equally among themselves, after deducting expenses. This custom was confirmed by the Most Holy Pope Gregory XVI, on January 11, 1844, when he elevated that Church with the honor of a Cathedral: it is written in those Apostolic Letters that, "considering the particular circumstances, and taking into account the ancient custom that prevailed there concerning this matter, We grant a special faculty, so that after this time, whenever a benefice of any kind is vacant from among those mentioned, namely, the Canons or Beneficiaries, all revenues derived therefrom, after deducting whatever expenses are necessary, shall be divided into as many equal parts, and distributed separately to the surviving Canons or Beneficiaries of the Cathedral Church of P." Relying on this custom, the Canons of that Church, on February 8, 1873, presented a petition to H. S. O., stating the following: The Priest Felix P., who held a canonry under the title of St. Gregory VII in that same Church, in July 1862, obtained from the Patron a nomination to the Archpresbyterate, which is the second highest office there, and which includes the care of souls. As a result of this, although he was not properly instituted or in possession of the canonry, and although he had not relinquished his canonry of St. Gregory, he claimed all the revenues of the Archpresbyterate, deducting only 360 livres, which were paid to the treasurer of that benefice, but without fulfilling the attached obligations. The Canons, adhering to the custom, request that the fruits unjustly received by the Priest be contributed to the common fund.

[*Latin ed. p. 12*]

12. OF CANONICAL FRUITS. Furthermore, they explained that Father Francis O., in February of the year 1861, reported that he had begun to enjoy the fruits of the canonical prebend of St. Peter, but that he had not yet obtained the canonical institution and possession from legitimate authority. However, at the beginning of the year 1865, he was granted by the legiti-

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mate superior, the Most Reverend Lord Pro-Datary, the right to receive the revenues of that prebend, to which, having relinquished his own rights, the Canons agreed, moved by his great poverty. From that time onward, the aforementioned priest began to bear the burdens associated with the prebend, and therefore, justly and rightfully, he acquired the fruits of the benefice. The Canons then repeated that the fruits which he had received before the permission of the superiors and the consent of the chapter had been granted, and that the burdens of the prebend, not he himself, but the chapter, were subject to. Finally, the Canons stated that in the year 1864, Father Jerome B., the Primicerius of that church, had been appointed to the Praepositura, which is the highest dignity, by Apostolic Letters, and that he had received the investiture from the Archbishop; however, he had not, as was required, informed the chapter of this obtained dignity. Indeed, the actual and corporal possession was delayed until the year 1873. Moreover, for the period that elapsed from the day of the canonical nomination and institution, until the day of the acquisition of possession, the Canons, who bore the burdens attached to the prebend, demanded that the revenues be paid according to the terms of the aforementioned custom. The Canons' petitions were presented to the Bishop, so that, after a properly convened chapter meeting, and in the presence of those concerned, he might consider the merits of the proposed question and transmit the documents pertaining to the matter. The Bishop acted accordingly, and, after confirming what had been stated above, and after receiving the deductions of the parties involved, he revealed his sentiments, which will be discussed below. Then, it was ordered that the case be placed on record under the formula of doubt, which is found at the end of this book.

A SYNOPTIC DISCUSSION. The Canons state that Felice P. was entirely without any right to enjoy the Archpriestly revenues of his prebend. For, he had no canonical...

[*Latin ed. p. 13*]

The canonical fruits were unjustly appropriated, and he was not protected by the authority of legitimate superiors; therefore, he could only obtain these fruits by violating the norms of justice and the sacred canons. Furthermore, he was pleased with a double, incompatible benefit at the same time: the archpresbyterate, which is the second highest dignity, and the canonry under the title of St. Gregory VII; therefore, he completely violated the rights of the canons in this matter. He does not seem to have sought recourse to good faith in order to defend his rights. First, in a matter so clear and evident to all, ignorance or good faith cannot be presumed; secondly, having been tormented by the goads of conscience, in the year 1864 he sought the Holy Penitentiary through his own confessor, and requested an indulgence regarding the receipt of the fruits of the archpresbyterate. The Holy Penitentiary, after considering the facts presented on September

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26, 1864, and after hearing the local Ordinary, responded that it did not seem expedient to grant this. Therefore, the priest P. lacks not only a canonical, but also an honest title, to claim those fruits of the archpresbyterate solely for himself. It remains, therefore, that he must return them to the chapter's mass, according to the custom explained above. However, the canon P. does not believe that he should, with strict justice, contribute those fruits to the common fund, but argues that the matter is not so if equity is considered. Indeed, recounting the history of the events from the beginning, he states that he made a solemn vow to obtain the archpresbyterate, which became vacant in 1860, and that he had renounced a more worthy position. After the patron had made his nomination, the Bishop, before proceeding to the institution, considered it better to inquire the judgment of the Holy See, and while this was pending, he was taken from this life. Then, the patron, so that his nomination would not be rendered void, granted the revenues of the archpresbyterate to the priest P., deducting 360 florins due to Jerome B., who had received the administration of that archpresbyterate from the deceased Bishop. He abstained from receiving them for two years, awaiting the permission of the Holy See to which he had appealed; however, since a response was long delayed, perhaps due to the fault of the officials, as he himself says, he brought the matter to the Holy Penitentiary with the help of his confessor. Indeed, the Vicar Capitular, to whom the matter had been referred, decreed that the priest could receive those fruits, according to the rescript of the Holy Penitentiary, but with due regard for the rights of the chapter, and so-

[*Latin ed. p. 14*]

"Regarding the fruits of the canonry," he stated, "I have learned, after this controversy, that my prayers to the Holy Penitentiary were entirely rejected. Therefore, I strive to demonstrate that I have never lacked good faith. Furthermore, I assert that the income from my canonry is quite small, and that the sum I receive from the patron as a prebendary, under the title of Archpriest, scarcely equals the portion that would be granted to me if the said patron were to grant the fruits of vacant benefices to the chapter. Moreover, I declare that I have spent a considerable portion of these revenues on the benefit of the Cathedral Church, which, due to the times and the burden of taxes, had fallen into extreme poverty. Then, he noted that he has not caused any loss to the chapter in receiving these fruits; indeed, if he had rejected them, it would have been to the benefit of the patron alone; therefore, he is unjustly accused of this, since, if it had not been so, the canons would have had no means of recovering anything from him. Finally, he concluded his statement, saying that, if it should seem good to the Holy Congregation, he would never receive the income from the Archpriest's prebend in the future, even though this would only be to the detriment of the patron; but that, if no new arguments are presented, he will not

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refuse to contribute what he has received thus far to the common fund. However, he expressed his hope that, with the Archpriest's economist finally removed, and with the calumnies leveled against him disregarded, the Archpriest himself would resign. The Bishop, revealing his sentiments, stated that the custom established within the Cathedral Church, and confirmed by papal documents, favors the canons; as for whether the canon lacked good faith or not, he said he did not know, since the matters in question relate to events that preceded his election, and which are very difficult to investigate; however, he added that before his eyes is the Rescript of the Holy Penitentiary, in which the requested indulgence was entirely denied. Finally, with regard to the Archpriest's prebend, which involves the care of souls, he stated that he desires nothing more than that an effective remedy be found, and that it be granted to a suitable priest who would hold it as a title. Regarding the second question, which concerns the priest O., the canons reiterated, almost exactly, the same arguments that they had previously presented against the priest P. For, although..."

[*Latin ed. p. 15*]

In the year 1865, the Canons of Dataria, with the consent of the Canons, decreed that the Canonry of Saint Peter the Apostle, the revenues of which were received by the Government, should benefit therefrom; however, this provision did not extend to past or future times. This is evident both from the concept inherent in any rescript or agreement, and from the fact that the aforementioned Priest O. was, before the aforementioned year of 1865, deprived of any legitimate title to receive revenues, except for the nomination of the patron, which, if other circumstances do not concur, is of absolutely no importance. Indeed, he did not even fulfill the obligations to which he was subject at that time, which were nevertheless fulfilled by the Chapter. However, the Priest O. stated to the Canons that he had obtained the nomination in the year 1861, but that he had only received the fruits of the Canonry of Saint Peter at the end of the year 1864. Therefore, he did not bear the burdens of the prebend during that intervening period, since he did not enjoy any emoluments. Having, in the year 1865, obtained permission from the Holy See and with the consent of the Canons, to receive the revenues, he began to diligently fulfill the obligations, as the Chapter itself testifies. Subsequently, the civil Government also granted him the canonical fruits for the years 1861, 1862, 1863, and 1864, which, though impoverished, he did not reject. He stated to the Chapter that he did not deny that he deserved a suitable emolument for the obligations fulfilled from the year 1861 up to the year 1864; however, he said that he was so pressed by the difficulties of this situation that he could barely sustain life. For from the Canonry, he receives barely 208 florins, which are entirely consumed for the sustenance of his life. The Bishop, having considered the matter from various angles, believes that the prayers of the Canons should

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be heeded.

RELATING TO THE THIRD QUESTION, which differs greatly from others, and which refers to Jerome B., formerly Capitular Vicar, it was noted that he received the nomination from the Holy See, but the investiture from the Archbishop. Nevertheless, the Canons, in defending their rights, invoke the custom by which those invested with the fruits of a prebend are required to fulfill them from the day of canonical collation until the day of the acquisition of possession. They claim that it is the law that the fruits of any prebend do not begin to accrue except from the day of the acquisition of possession; thus, since the aforementioned B. lacked possession from the year 1864 until...

[*Latin ed. p. 16*]

According to Canonical Law, number 1873, it is necessary that the fruits of this present time be returned to the common fund. It cannot be said that the Pope granted him a praepositura [benefice], so that he might be able to meet the heavy expenses with which he was burdened in the exercise of the office of Vicar. For there is no certainty of this will of the Pope; therefore, it cannot be presumed that the ancient custom, favored by the chapter, has been set aside, which was likely unknown to the Pope. Furthermore, the canons state that, besides the emoluments of the Curia, which they call uncertain, and besides the revenues which came from his own canonry, and from the Archpresbyteral Economy to the Priest B., one thousand florins were provided to him annually by the civil government, with which he could defray the necessary expenses of the Curia. They also note that the burdens inherent in the praepositura were borne during this period not by him, but by the chapter. Therefore, no reason can be devised by which Jerome B. could have appropriated the fruits of the praepositura from the year 1864 until the year 1873 to the common fund. On the contrary, Priest B. confesses that he does not ignore either the custom of that Church, nor the Apostolic Letters of Gregory XVI, which confirm it. However, he contends that this custom does not exercise its full force in the present matter. First, he observes that it is valid only when it is a question of receiving revenues from vacant benefices. It is said in the Bull of Gregory XVI: "Considering the particular circumstances and having taken into account some ancient custom which prevailed in this regard, we grant a special faculty that after this time of vacancy, etc." Indeed, it cannot be said that the benefice, which each person has already received through canonical nomination and investiture, is his own. Nor do the canons object that the priest did not actually and physically possess the benefice, and therefore it should be considered vacant at that time. For if possession was lacking, it does not necessarily follow that the praepositura should be considered vacant. Furthermore, no one is ignorant that one must bear the blame if, having acquired actual and physical possession at the opportune time, one

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did not do so; for the greater the value, the more vehemently one was, albeit unwillingly, repulsed. Indeed, it would not be consonant with reason if misfortune and injury were inflicted upon him by the government.

[*Latin ed. p. 17*]

FRUCTUUM CANONICALIUM 17, the fruits of the canonical institution, were to be rendered with greater diligence by the Canons. Therefore, that principle received by canon law, namely that fruits should not accrue except from the day of the acquisition of possession, must allow for exceptions, among which it is especially to be noted if, by the one against whom the claim is made, the acquisition of this possession was prevented. Therefore, the Holy See often grants dispensations from the date of acquisition for just causes, and meanwhile allows the fruits to be paid. It is not to be passed over in silence that the Vicarius capitularius, the Prefect, wished to inform the Supreme Pontiff, in order that the immense expenses of the Curia might in some way be sustained. Indeed, while the preceding Vicarii capitulares received 125 florins per month from the Episcopal table, on the contrary, those who bore this burden for ten years were denied this emolument by the Government. Hence, the preachers of the Word of God, both ordinary and extraordinary, were received into their home and supported at their own expense; hence, they performed their labors without remuneration; indeed, they incurred such expenses that they amounted to the value of 10,000 florins in total. Truly, after considering all these things, the Supreme Pontiff granted him the Prefecture, and when he learned that he could not, by a powerful reason, acquire possession, he was deeply saddened. It would seem unjust if the Canons were to agree in such a way as to frustrate the will of the Pontiff. Let the Canons not say that they bore the burden of that prebend, and therefore they are entitled to enjoy the emoluments: for they demanded a just reward from him to whom it was due by right, and it was not denied to them. Nor should they claim that the Vicarius capitularius cannot simultaneously hold incompatible offices, namely the Primicariate and the Prefecture; for he himself was content with the fruits of the Prefecture, and voluntarily relinquished the fruits of the Primicariate. But these things, the Priest B. adds, are to be omitted as contributing little to the utility of the cause. Indeed, the Canons demanded the fruits of the Prefecture from the year 1864 until the year 1873. But he himself began to receive the fruits of the Prefecture from the year 1872, while those of the preceding years, namely from the year... (Acta. Tom. VIII, fase. LXXIV. %).

[*Latin ed. p. 18*]

From the year 1864 until the year 1872, he ought to have received the canonical fruits, but not only has he not yet received them, and all the canons acknowledge this, but there is also no hope that he will receive

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them in the future. Therefore, the claims made by the canons regarding the fruits of the Prepositura, from the year 1864 until the year 1872, are merely hypothetical and pertain to a speculative case. Thus, the entire controversy is reduced to this: whether the fruits of the Prepositura from the year 1872 until the year 1873 belong to the Chapter, or rather to Jerome B.

However, to understand this more easily, the very priest B. himself states that in the year 1872, because he was afflicted by illness, and because he subsequently had to go to Rome for diocesan business, and because there was hope of obtaining all the fruits of the Prepositura for the eight years not received, he postponed the act of taking possession until the following year, namely 1873, when, of course, such hope had ceased. In the meantime, however, he informed both the Bishop and the Chapter of this delay in taking possession, and also made a declaration, stating that he would deposit the revenues of the Primiceriatus, which he enjoyed, into the Chapter's treasury, if he could recover the fruits of the Prepositura.

It happened, therefore, that upon entering into possession on March 26, 1873, the revenues of the Prepositura were granted to him, beginning from the date of the concession mentioned, which was indeed April 21 of the year 1872, and no revenues of the Primiceriatus were demanded from him for that year. Therefore, the entire question concerning the fruits of that year revolves around this: the canons claim the fruits of the Prepositura, which are more substantial, while the Vicar wishes to render the fruits of the Primiceriatus, but the Prepositura wishes to retain them.

The canons argue that, indeed, the Vicar had not yet taken possession of the Prepositura during the period between 1872 and 1873; but the Vicar, using the arguments explained above, which can be considered general, and also other deductions that pertain more closely to this matter, attempts to defend his right. Indeed, he adds that, if, for just reasons, he did not enter into possession of the Prepositura until the year, this was more to the benefit of the Chapter than to his own. For, if

[*Latin ed. p. 19*]

Having entered into the possession of the canonical fruits, the Primiceriate would have been rendered vacant, and its revenues would have been drawn to the governing authority. Therefore, the delay in the canons obtaining possession allowed them to receive the revenues of the Primiceriate. However, since they are clearly not content with the present situation, they demonstrate a certain avarice, and attempt to convert a rightful gain to the detriment of the author. Furthermore, since the reason for the delay in obtaining possession was notified to the canons, and they, in turn, maintained perpetual silence (because, indeed, their own advantage was at stake), it must be understood that this delay proceeded by their implicit consent and approval. Consequently, during this time, the canons fulfilled the duties of the Praepositura, but received a suitable emolument, as ordered by the

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Priest B., and, likewise, according to his order. Moreover, it is entirely contrary to the laws of equity and justice that the canons demand 50 or 60 scuta, whereas the difference between the revenues of the Primiceriate and the Praepositura is precisely that amount, while this same person, acting in the capacity of a Vicariate Capitular, at their behest, has lost at least 10,000 florins. Therefore, it does not appear equitable that this person should be burdened with such expenses, while the chapter remains free from them. To all of this is added the opinion of the Bishop, which entirely favors the Vicariate.

REMARKS FROM OFFICE. – It is certain in law that no one can receive the fruits of a benefice without possessing it. Devoti in Instit. lib. 2 tit. 14. sect. 5. §. 36 states: "It is not enough for someone to have obtained a benefice, unless he also acquires possession, in order to receive its fruits and to enjoy them." This is especially important in chapters; in them, a third thing must be observed, namely, the right of the college, so that no one occupies a place in the college unless he is received by the group as a brother. And although the granting of a benefice by the Pope is involved, he cannot obtain possession unless he is inducted by the chapter. Thus, Lotter, de re benef. lib. 1. qu. 19. num. 9 states: "Nor is it necessarily the case that [the granting, and the canonry] should coincide in the very article of the grant, or with respect to time, as is evident from..."

[*Latin ed. p. 20*]

20. OF CANONICAL FRUITS: These texts, or those pertaining to them, must be carefully considered, because the right to a canonical fruit is founded in the chapter itself, and cannot be removed from it in any way, lest anyone act against the will of the University, which is the very foundation of its reason. For even if the Pope provides for a canonry, the possession of the chapter must still be required, which confers the validity of reception.

And in book 3, question 5, number 23 and following, the reason for prescribing this form seems to me to be this: since a college is a society, it does not allow any right to be imposed upon it against the will of its colleagues or members. I. Those who are admitted as members for other reasons, as I said, would seem to have a prejudice against the college, to which its right always intends to be preserved. See Put. decis. 22, book 2. Therefore, the form of the university's part in this matter is that the chapter receives the person, as is expressed in chapter 5, concerning concessions.

The necessity of reception, in order that a canon may enjoy the canonical fruit, is demonstrated by De Hosa de exequut. lit. Apost. part 1, chapter 5, number 95 and following. The following clauses are also included: that the person be received as a brother, with full canonical rights, and that a stall in the choir and a place in the chapter be assigned to him. For the explanation of these, it is well known to beginners that a prebend and a

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canonry are not the same thing, even when the word "prebend" is strictly used to denote an ecclesiastical benefice, but they are different, and have nothing in common by their own nature, except for the effect of perpetual annexation, as noted by canonists, etc. For the right to have a stall in the choir, a place in the chapter for singing and reading, and a voice in the chapter, comes from reception into the brotherhood, as in c. in Genesi de election, in fine; but a prebend is the right to receive the fruits of a church to which it has been assigned, according to the divine office, as one of the members of the college, as all canonists, etc., say. Thus, a canonry can well exist without a prebend, as I have seen in many cathedrals.

[*Latin ed. p. 21*]

FRUCTUUM CANONICALIUM 21. Quare, possessio cum receptione in fratrem est omnino necessaria antequam aliquis possit frui fructibus assignatis. Nec hoc sufficit. Non omnis possessio est valida, sed illa legitima requiritur, et ut legitima sit, oportet possessionem capitulariter transferri; alioquin, ea est invalida. In re notissima, satis erit Barbosam in tractatu de canonibus, cap. 15, num. 1 et sequentes, ita dicere: « Ibi » Possessio capitulariter capi debet de quocumque canonicatu sive dignitate quae sit de capitulo. Sic Innocentius, etc., et ideo possessio aliter capta non est considerabilis, et proinde nec manutenibilis: Gratianus. Rota, etc. Unde in eadem Rota, in Syracusana canonicatus, 1 Februarii, 1623, coram Pirovano, dictum est: « quod cum instrumentum narraret tantummodo possessionem fuisse captam coram notario et testibus in stallo canonicaii, nulla facta mentione de praesentia capituli tunc congregati, merito possessio actus remansit invalidus... » Ampliatur primo, ut procedat etiam si possessio fuisset capta de mandato exequitoris Uterum Apostolicarum... » Ampliatur secundo, etiam si data esset facultas capiendi possessionem canonicatus propria auctoritate... » Ampliatur tertio, etiam si capta fuisset a canonicis de capitulo, sed non capitulariter. » Verumtamen, ex altera parte, notandum est quod capere possessionem in canonicatibus pertinet ad formalitatem, hinc, iustis intervenientibus causis, ab ea posse dispensari. Sic Ferrarius, verbo canonicatus. His omnibus expensis proposita sunt solvenda:

I. Num fructus Archipresbyteralis quos ab anno 1862 Sacerdos Felix P. percipit in capituli massam refundi debeant in casu.

II. Num fructus canonicatus S. Petri ab anno 18

III. Num reditus Praepositurae ab anno 1864 usque ad annum 1873 Hieronymo B. vel capitulari mensae assignari debeant in casu.

[*Latin ed. p. 22*]

ON THE RESOLUTION OF CANONICAL FRUITS. The Holy Congregation of Councils, on the 9th of May, 1874, responded affirmatively to the first and second questions, favoring the mass of the chapter for truly received fruits. To the third question, it responded affirmatively, with the con-

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dition that Jerome B. restore to the chapter mass the fruits of the prebend for the time during which he actually received the fruits thereof, and that the Bishop take care of the proper and equitable liquidation of the fruits in the aforementioned questions. THEREFORE, IT IS UNDERSTOOD: 1. That it is not sufficient for someone to have obtained a benefice in order to receive and enjoy its fruits, but it is also required that he acquire possession thereof. 2. That the fruits of any prebend or benefice do not accrue except from the day of the acquisition of possession. 3. That the fruits received by a beneficiary, before he has obtained actual possession, must be restored. 4. That canonical possession of a canonical prebend must be obtained in the presence of the chapter, assembled collegially, in order that it may be considered valid and legitimate. 5. That the Holy See can, for just reasons, dispense with the requirement of obtaining possession, so that one may be able to receive the fruits of the prebend.

[*Latin ed. p. 23*]

23. CONCERNING SACRED VESSELS AND THE PARSONAGE. On May 9, 1874, a meeting was held and the following occurred. On March 23, 1872, the question was debated before the Sacred Congregation of the Council concerning "whether there was a place for the erection of a benefice church as a vice-parish for the administration of the sacraments, or rather, whether the qualities and nature of both the church and the benefice should be preserved according to their foundation." This matter was reported in Volume 7, Phase IX of this publication, page 511. And the Sacred Congregation responded to the proposed question: "It is to be requested of the Most Holy [Father] that, with the preservation of the qualities and nature of both the benefice church of G, and of the benefice itself, according to their foundation, all parochial functions may freely be exercised by a vicar therein, in such a manner as the Bishop, in the Lord, shall deem fitting, independently of patrons, whatever may be to the contrary." With the benefit of a new hearing, the case was again presented at the meetings on July 20, 1872, and regarding the question of "whether one should adhere to or depart from the decisions in the case of the Reverend Fathers," the response was: "in the decisions and furthermore." Thus, it seemed that an end was put to all controversy. But things turned out differently. The Bishop, H. S. O., based on his opinion, immediately appointed a parish vicar and established him in the church of G to care for the souls. In order that the endowed rector of the church might freely perform his own duties, he ordered that the sacred vessels, which were neither left by the founder, nor acquired by the fruits of the benefice, but were purchased with money collected from the people, should serve not only for the benefice, but also for parochial functions. This arrangement, however, was poorly received by the endowed rector of that church, and, having issued a protest to the Episcopal Curia, he declared that he would

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not comply with it in any way, until...

[*Latin ed. p. 24*]

24. Concerning the interpretation of the aforementioned sentences regarding the sacred vessels, the Reverend Father Ordinary was not certain of the obligation that the Bishop had imposed. This led to the situation that the people, who had aided the church with their offerings and sacred vessels, were upset to see these items used for parochial functions, and thus, serious disturbances arose, requiring the intervention of civil authority to quell them, after which a criminal trial was subsequently held on this matter. Thus, in this unfortunate state of affairs, the parish priest presented a letter to the Bishop, requesting that the controversy be resolved and the scandal dispelled. Furthermore, in order to address the gravity of the situation, he provided from his own resources the items necessary for the parish priest to perform his duties. Meanwhile, he requested that it be declared whether the priest, M., who had been causing a long and bitter opposition in Le Conquet, could, by virtue of the sentence issued by the Reverend Ordinary, have access to the common areas of the church, such as the organ, the bells, the vessels, the sacred vestments, and other items, or at least to those items which were not left by the founder, nor acquired from the revenues of the benefice, but purchased with the alms of the faithful. He also requested that it be determined whether the same parish priest could use two rooms attached to the church and built by the people for the residence of the rector, who, however, has never lived in them, nor does he live in them at present. Upon receiving these letters, it was ordered that the case be put on record, and this was made known to the Bishop, who was to arrange a suitable time to assert his rights; however, the priest M., although admonished by the Bishop, presented no deductions. Therefore, the case, intended to be disputed and resolved, was proposed under a formula of doubts, which is written at the end of this book. Synopsis of the dispute. Both parties, in order to defend their rights, appealed to the sentence of the Reverend Ordinary, as mentioned above, drawing a false, and indeed contradictory, conclusion. Therefore, the entire controversy rests on determining the correct meaning, that is, on ascertaining in which part the will of the pious testator was changed, and in which part it still remains intact.

OBSERVATIONS FROM THE OFFICE.

[*Latin ed. p. 25*]

And concerning the chambers: It is undoubtedly the case that the pious founder, Thomas, not only endowed the Church dedicated to the Blessed Virgin, but also the sacred furnishings with which it was adorned, granting all rights and appurtenances to the benefit, so that the Rector of that Church alone might possess them. Therefore, it must be considered whether, by

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a change in his will, so that not only the Rector, but also the parochial Vicar, may perform his functions in that Church, the Church itself, and also the sacred furnishings belonging to it, are now to be considered common. Indeed, since His Eminence has not explicitly spoken about these sacred furnishings, nothing remains but to consider the implicit meaning of his statement, from which it can be gathered what is to be given to the Rector, and what to the parochial Vicar, both with regard to the furnishings left by the founder, or acquired through the benefit, and with regard to those which the people have acquired with their own money. With these things presupposed, concerning the first point of contention, it can be observed from the statement of His Eminence that the Vicar has been granted any faculty and freedom to exercise his parochial functions in the Church of G, and that this freedom is limited only to the extent that it may not damage or diminish the qualities and nature, both of the Church and of the benefit, according to the foundation. But what are the qualities and nature of the Church and the benefit, it seems that the testator himself has declared through the aforementioned words: "That the aforementioned Church of the Patronage of the Blessed Virgin is erected as a simple and unencumbered benefit, with its rights and appurtenances, and shall always and in all future times have and retain, and must have and retain, the nature, quality, and condition of a simple benefit, by the law of lay patronage, etc." Therefore, the quality and nature is that the benefit established in that Church is simple, by the law of lay patronage, and does not have attached to it the care of souls. Whatever, therefore, does not in the least damage these qualities and nature, should be considered to have been granted to the parochial Vicar; but that the sacred furnishings are common to him and the Beneficiary in the performance of their functions, does not cause any injury, nor any damage, to those qualities, and therefore, does not appear to—

[*Latin ed. p. 26*]

26. SACRED UTENSILS: The reasoning by which a parish priest might be prevented from using certain furnishings. Indeed, a correct interpretation seems to suggest the very opposite. In truth, the Holy See, having obtained the power from the Pope, granted the parish priest the authority to perform all parochial functions within that church; therefore, it clearly implies that he was given the means to achieve this end. For it is a principle of natural law that he who desires an end also desires the means that lead to that end. However, there can be no doubt that parochial functions cannot be performed without sacred furnishings. Therefore, little or nothing would have been done for the benefit of the faithful if the priest appointed by the Bishop were to be in a situation where, lacking all furnishings, he could not fulfill the duties of the care of souls. Furthermore, no one should doubt that the Holy See granted the parish priest the use of that church in order to

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exercise his functions. For the very words of the decree, understood in their natural sense, indicate this. It is stated, "It is requested of the Most Holy Father that, through a suitable provision, the functions of the benefice of G... in the church may freely be exercised by the parish priest..." Moreover, the use of something implies the use of those things that are attached to it, according to the well-known principle, "the accessory follows the nature of the principal," especially if the use of the principal thing would be of little or no benefit without the use of the attached things, as is the case in our matter. Thus, according to civil law, he to whom the usufruct of a building is granted can also use the instruments of the building (L. 15 §. 6 ff. h. t.), and he to whom the usufruct of land is granted receives the instruments of the land according to the same law (L. 9 §. ult. ff. h. t.). Certainly, both the organ, by which the piety of the faithful is aroused and fostered, and the bells, by which the faithful are called to church, and the sacred vessels and vestments, by which the decorum of the functions is enhanced, constitute, in a certain sense, part of the church itself, and therefore should be granted to him to whom the use of the church has been granted. This is further confirmed by the law of the sacred canons; for it is generally established that vestments, ornaments, and all other things necessary for the honorable worship of God,

[*Latin ed. p. 27*]

And the buildings, as well as the chambers, should be included in the fabric, and these are understood under the name of the fabric. Albertus de sacris utens. Dec. LXXXII. n. 3. Franc, de Eccles. Cathedr. c. 20. n. 34. Amostaz. de caus. piis lib. 4. c. 1. n. 25, and others throughout. From which it is established as a principle that the repair of the church, and the preparation of ornaments, and other things pertaining to divine worship, should proceed with equal diligence. Franc, de Eccles. Cath. cap. 20. n. 34 et seq. The Rota in Gerunden agrees, 17 Inn. 1601. num. 1, before Pius. This is so true that if a fund for the fabric is left, unless it is expressly stated that it must be used specifically for the material repair of the church, there is no doubt that it can be spent on ornaments and other necessities for divine worship; because these are included under the name of the fabric, as stated by Amostaz. de caus. piis lib. 4. c. 1. n. 25, Sánchez cons. lib. 4. cap. 2. dub. 14, De Lago de iustit. disp. 24. sect. 13. num. 304. Therefore, if the sacred furnishings are so closely connected with the church, or the material fabric, that they are considered as one, then it rightly follows that the parish priest is entitled to use the church, and to use the vestments, and other furnishings. Finally, it must also be noted that the pious founder, in endowing that church, intended nothing other than the spiritual good of the faithful; and therefore, if he were present in the present circumstances, and saw the parish priest established in his church for the benefit of the people, he would in no way hinder him, nor would he deny him the use

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of the sacred furnishings. Therefore, according to the opinion of the Holy Office, it is the right of the parish priest to use, in turn with the beneficiary, the sacred furnishings of that church.

ON THE CONTRARY, the decree of the Holy Office states that in no way has the parish priest been granted any rights that would pertain to the church itself, or to the beneficiary, or to their possessions in any way, and that he should claim them for himself. Indeed, the careful wording expresses only that the parish priest can freely exercise his functions in that church, but in such a way that the qualities and nature, both of the church and of the benefice, remain entirely intact.

[*Latin ed. p. 28*]

28. Regarding the arrangement of the sacred vessels, it appears that the testator's will was only limited to the extent that not only the Beneficiary should perform his functions in that church, but also that the Vicar could, in the future, perform his duties there; however, no power was granted to the Vicar to share the wealth and goods of that church, among which, undoubtedly, the sacred vessels are included, with the Beneficiary. Indeed, if such a right were granted to the parish priest, neither the nature nor the qualities of the church, nor of the benefice, according to its foundation, would be preserved. For the pious founder clearly stated his will that the aforementioned church, dedicated to the patronage of the Blessed Virgin Mary, should be established as a simple and unincumbered benefice, and that it should always, and for all future times, have and retain its full rights and appurtenances, and should have and retain the nature, quality, and condition of a simple benefice. But if the vessels, which certainly belong to the number of the church's full appurtenances, were to be used for the benefit of the Vicar, then that church would, in a certain sense, become a curacy with regard to its appurtenances. This, however, is contrary to the nature and qualities of the benefice itself, which the Holy Office wished to preserve and maintain intact. Moreover, if in his considered judgment, the Holy Congregation had granted the Vicar the common use of the church's furnishings, it would have caused great detriment to both the church and the Beneficiary; since, as clothing, vessels, and other utensils belong to the class of things that are consumed by use, the more frequent and extensive the use, the more quickly they will deteriorate or be completely lost. Therefore, the rights of the Rector would be violated, and the fruits of the benefice, with increased expenses, would be diminished, from which, however, the Holy Office seems to have entirely refrained in the aforementioned decree. Especially if one considers the revenues of that benefice: for the Bishop states in his informative letter of October 14, 1871, that the revenues of the Benefice of G. amount annually to the sum of 40 scudi. It does not help to argue that the intention of the Sacred Congregation in drafting that decree was that the parish priest should be able to perform his functions in

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that church, but that this end could not be achieved without the furnishings. For in law, it is established...

[*Latin ed. p. 29*]

"And concerning the chamber, it is twenty-nine feet wide, and it is fitting that he who is burdened with the care of souls should also be burdened with the provision of sacred vessels for the churches, so that due worship may be rendered to God." Indeed, no one is ignorant that, with regard to the cathedral church, the lack of furnishings compels the Bishop to procure sacred vessels, as a direct responsibility of the church itself, and as its pastor, according to canon 10, question 1, chapter 1, concerning churches being built. See De Albertis, on sacred vessels, decree XLII, numbers 38 and 39. Furthermore, the parish priests, and other principal rectors of parochial churches, who receive the fruits of those churches, are obligated to provide sacred vessels for those same churches. See De Albertis, chapter XLI, number 11 and following, where he thoroughly approves of this, provided that the parish priest has sufficient fruits, beyond a proper sustenance, to acquire the necessary sacred vessels; number 145; but if others are lacking, the burden of providing for the parochial church falls upon the people, number 213. However, the revenues and emoluments with which this parish vicar possesses are not so meager that he should either appeal to the people for sacred vessels, or be forced to use those belonging to others. Indeed, in the same informative letter, the Bishop states that he has assigned the vicar a sum of 60, to which are added the alms of the masses, and the revenues that amount to a sum of 310 annually. Finally, it must not be omitted that this matter concerns a decree in which the will of the pious founder has been changed; therefore, that interpretation should be preferred which more closely preserves the will of the testator, and which restrains the change, as a thing abhorrent in law. For nothing is more solemn, or more ancient, in the Church, than to honor the pious wills of founders, and to change them only when a just cause intervenes, as decreed by the Council of Trent, session XXII, on Reform, chapter VI. Therefore, since the will of this founder has already been changed, for wise reasons, in the present controversy, that interpretation should be chosen which favors the will of the founder. Now, it remains to be investigated whether, at least, those furnishings which have been acquired through the offerings of the people, can be used in common by the beneficiary and the curate. And in this matter, it seems that the curate should be favored. For..."

[*Latin ed. p. 30*]

The sacredness of sacred vessels shines forth through the use of this sacred furnishings, which the people of the Church have provided; in no way can the qualities and nature of both the church and the benefice be attained, according to their foundation, if the faithful should give them as

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gifts in subsequent times; therefore, all the arguments mentioned above, which hindered the Vicar from reclaiming the utensils left by the founder, or acquired through the fruits of the benefice, for his own use, cease to have any force. Furthermore, what can be determined in this matter by the will of the donors is clearly evident. For in making these offerings, the faithful considered nothing other than divine worship and their own spiritual benefit. Indeed, since parochial functions are most closely related to the worship of God, and are necessary for the faithful, more so than the functions of the benefice, it is clearly understood that the people intended, when making these offerings, to provide for the needs and dignity of the parochial functions. Moreover, the faithful have so openly declared what they think about this matter, that no conjecture or divination is needed. For, as we mentioned above, when the chaplain, having acquired sacred vestments at the expense of the people, refused them to the parochial vicar, he was so indignant that it caused a disturbance and uproar. This fact alone sufficiently demonstrates that it is not only just, but also prudent, that utensils purchased at the expense of the people should also be used for the benefit of the parochial vicar; otherwise, the parishioners will not only be grieved and scandalized, but will be discouraged from making such offerings in the future. Turning to the second point of contention, stronger arguments, especially those derived from prudence and equity, can be adduced, particularly with regard to those two chambers of the church, which were built with the money of the faithful, with the intention that the Beneficiary should reside among them, although he never resided there; whereas, on the other hand, the parochial vicar is in great need of them. Therefore, since these two chambers are of little use to the priest M., but are very necessary for the parochial vicar, a just reason demands that they be granted to him. Furthermore, the long-standing difficulties and contradictions that the Benefice has caused, as the Bishop...

[*Latin ed. p. 31*]

And the fact that thirty-one rooms were opposed to his will is evidence that he was moved not by a sense of his own rights, but by the heat of discord. However, the opposing side was not without its own reason. The parochial vicar, who, by virtue of the decree of the Holy See, was appointed by the Bishop to that church, brought nothing of his own there, but everything he found there pertained to the benefit of the church, whether from the original endowment, or from the fruits of the benefice, or from the alms of the faithful. Therefore, this vicar cannot present any right, nor any title, to claim any utensils whatsoever. It does not help to argue that the gifts of the faithful do not affect the foundation at all, and that it remains entirely safe, even if those gifts are turned to the benefit and use of the vicar. For both that which is given from the original foundation of the Church, and that which is added later, by whatever legitimate means, passes into the dominion of

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the church itself, and becomes, as it were, part of its patrimony. Therefore, the same right that is required for someone to transfer the goods of the foundation to their own use, is also required for the use of those goods which are later given to the church. Therefore, this question is reduced to the first, and accordingly, if the vicar cannot use, by the decree of the Holy See, those sacred furnishings which were left by the founder, or acquired from the fruits of the benefice, nor can he use those which were added through offerings, it is of no consequence that the faithful may have given those gifts with the intention that they be used for any function, which concerns the worship of God, among which the parochial functions are especially included; for those offerings were made before the vicar was appointed, at a time when it was firmly established in the minds of all that the parochial functions were not to be performed in that church, as the founder had ordered. Therefore, the donors could only have intended that the gifts be used for the benefit of the benefice. Therefore, their complaints about the present situation are unjustified; for the sacred furnishings, acquired through the collection of money, yield to the increase of divine worship without question; nor are their minds twisted to the contrary, even if they are taken away from the parochial functions. As for the two rooms of the church that the parochial vicar requests to use, the same reasoning applies.

[*Latin ed. p. 32*]

Regarding the SACRED VESSELS and chambers: It is possible to have few of these. This one thing must be added, namely, that those chambers were constructed as the residence of the Rector: therefore, if the priest M. does not reside within his own church, it does not prevent his successors from acting with greater diligence in other matters. Hence, rights acquired from a third party, if those chambers are assigned to the Vicar, would be entirely violated and would be most unjust. Having explained these matters, the following questions are to be resolved: I. Whether and which sacred vessels of the church G. must be yielded for the use of parochial functions in this case. II. Whether the chambers intended for the Rector of the Church by the founder must serve the use of the Vice-Parish Priest in this case.

RESOLUTION: The Sacred Congregation of the Council decided on May 9, 1874, to respond as follows:

I. Negatively, except for the organ, bells, and the confessional seat, which are to be maintained at the expense of the parish.

II. If the founder has designated certain chambers, the Bishop should ensure that they are assigned to the use of the Vice-Parish Priest, provided that a suitable annual pension is paid to the Rector of the benefice.

THEREFORE, IT IS UNDERSTOOD:

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1. That Rectors of parochial churches, and other principal priests who receive the fruits of their churches, after deducting suitable sustenance, are obligated to provide for the sacred vessels for those same churches.

2. If a church is granted as a chapel to another parish, the use of the organ, bells, and the confessional seat shall likewise be considered as belonging to that parish, along with the burden of maintenance, which pertains to the Parish Priest.

[*Latin ed. p. 33*]

On approximately the 9th of May, the Mass was offered FOR THE PEOPLE in 1874. Summary of the matter. Bishop C. on the 18th of June, 1873, presented to the Most Holy Prince a petition concerning the following: "1. Whether a parish priest, having two parishes, who, for a reasonable reason, cannot celebrate the second Mass on Sundays or feast days, is obligated to apply the Mass during the week for the people of his second parish; or whether it suffices that he apply the one Mass which he celebrates on Sundays or feast days for the people of both of his parishes. 2. Whether, on suppressed feast days, in which he does not have the faculty of celebrating two Masses, it suffices that he apply the only Mass which he can say for the people of both of his parishes, or whether, on another day, he is obligated to apply the second Mass for the people of the second parish." The Sacred Congregation responded to these doubts as follows: To the first, affirmatively to the first part, negatively to the second. To the second, negatively to the first part, affirmatively to the second. Furthermore, the same Sacred Congregation granted to the same Bishop C., under the date of July 14, 1873, the faculty of dispensing for three years from the application of the second Mass for the people, on suppressed feast days only, to those parish priests of his Diocese who are in charge of two parishes, with the condition that the single Mass be applied for the people of both parishes. Having obtained this faculty, the same Bishop again presented this matter to the Sacred Congregation: "It often happens that, whether due to illness, or due to inclement weather, or due to flooding, etc., certain parish priests are unable to celebrate the second Mass on Sundays or feast days in their second parish." Therefore, he requests the faculty to dispense them from the application of the second Mass for the people, under the same condition.

[*Latin ed. p. 34*]

34. CONCERNING MISSES FOR THE PEOPLE: A single Mass for the people of both parishes should be offered, whether one parish cares for the other parish which is without a pastor, or whether the second parish serves the parish whose pastor does not reside in his church for proven reasons. And because the pastors of the second parishes have never suppressed the second Mass for the people of the second parish on feast days, on which days they did not celebrate two Masses; it is also required for all pastors a

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dispensation from the application of these Masses for the past time. With these things in mind, a decree was issued on August 8, 1873: "It should be written to the same Bishop, so that it may not be difficult for him to ascertain whether another priest is accustomed to celebrate in the other church, whenever on feast days the pastor, due to infirmity or inclement weather, is unable to go to the same church to celebrate. " To this mandate, the Bishop, acting in accordance with it, responded: "Whenever it is possible, another priest is sent, who celebrates Mass in any parish on Sundays and on holy days of obligation, for the absent or infirm pastor." But it often happens that it is impossible to celebrate Mass in the second parish of the absent, infirm, or otherwise impeded pastor, even on Sundays and holy days of obligation, for the following reasons: 1. Because there are fewer priests; 2. because if it is a matter of sudden inclement weather, the pastor cannot procure another priest; 3. because if it is a matter of sudden infirmity or illness, no priest is present who can celebrate Mass. And if it is a matter of a longer illness, often no other priest is found than the neighboring pastor, who, after celebrating the first Mass in his own parish, celebrates the second Mass in the principal parish of the sick person, but cannot celebrate in the second parish of the sick person. With this response given, a rescript was issued: Through summary prayers. A synoptic discussion. OBSERVATIONS FROM THE OFFICE. No one is ignorant that all pastors of souls are bound by divine law to celebrate for their flocks. This is evident from the Council of Trent, session XXIII, chapter I.

[*Latin ed. p. 35*]

Concerning the Mass for the People, section 3, of the formulary, where it is written: "Since the divine precept obliges all to whom the care of souls has been entrusted to know their sheep, and to offer sacrifice for them," etc. This obligation, as determined by ecclesiastical law, extends to all Sundays and holy days, on which the faithful are obliged to attend Mass. This is evident from various declarations of the Holy See, in the acts of Pistorien and Prafen, of February 14, 1699, which were approved and confirmed by Innocent XII by a special Brief dated April 24 of that year, beginning with the words "Nuper," and especially from the Constitution of Benedict XIV, "Cum semper oblatas," of August 19, 1744. Indeed, a pastor appointed to two parishes is obligated to offer two Masses on holy days, either by himself, if he has the faculty to do so, or through others, or on another day of the week, if he lacks that faculty, unless the union of the two parishes is complete and extirpating, so that from the two parochial churches, one has completely emerged through the extinction of the title of the other. In a doubtful case in the matter of Lucen, dated March 12, 1774, the question was asked: "Are pastors appointed to two parochial churches obligated on Sundays and other holy days to offer Mass in each church, either by themselves or through others, for the people?" The response was: "Affir-

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matively, except for parishes united by a complete and extirpating union, and this should be written to the Bishop, according to instruction." In this instruction, the Holy Congregation considered it necessary to inform the Bishop that it had never doubted "that pastors are obligated to offer the aforementioned Mass for the people on each of the Sundays and holy days in each of the parochial churches, which are either equally principal or subjectively united and incorporated, since the application of only one Mass for the people takes place in those parochial churches which are so united and incorporated that from two, one completely emerges through the extinction of the title of the other." Nor did the Holy Congregation judge otherwise in the case of Oveteli, concerning Masses for the people, of November 18, 1826, and in the case of Cameracen, of September 25, 1858, in which it was asked: "Is a pastor who governs two parishes, and therefore celebrates twice in a day, obligated to offer the Mass for each parish, despite the scarcity of income in the case?" The response was: "Affirmatively."

[*Latin ed. p. 36*]

36. CONCERNING MASS FOR THE PEOPLE. The same is declared in the case of Salamaútina, on February 22, 1822, and on March 21, 1863. This precept is so urgent that pastors of souls are bound to celebrate Mass for the people even on those feasts which have been suppressed by Pope Pius VI, because on those days the Church only exempts the faithful from the obligation of hearing Mass and abstaining from servile works. Therefore, the obligation of the parish priest to celebrate Mass for the people, as before, remains, as is revealed by several declarations of the Holy Penitentiary, cited by Scavini and other authors. The same must be said of the parish priests of Gaul, who are bound to offer Mass for their flock on days of feasts that have been suppressed, or on Sundays that have been transferred by the concession of Pope Pius VII, in the year 1802. This is clear from various decisions of the Holy See, especially from the declaration of the Sacred Congregation of the Council, approved by Gregory XVI, in response to the Most Reverend Monsignor Bouvier, Bishop of Cenomanensem, dated June 14, 1841, as well as from the response to the Archbishop of Tolosa, dated August 6, 1842, and again from the decision of the Sacred Congregation of the Council, dated September 25, 1847. Therefore, in order to fulfill this obligation, it is not sufficient for the parish priest to offer Mass for the people on Sundays to which the solemnity of the suppressed feast has been transferred, but he is also bound to offer Mass on the very day on which the offices for the suppressed feasts are commonly recited in the Church. This is most clearly evident from the declaration of the Sacred Congregation of the Council, dated September 25, 1847, and especially from the Constitution of Pope Pius IX, *Amantissimi*, of May 3, 1858, of which these are the words: "By these letters, we declare, we establish, and we decree that parish priests and all others who are actively engaged in the care of souls,

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are to celebrate and offer the sacred sacrifice of Mass for the people, both on all Sundays and other days which are still observed by command, and also on those days which, by the indulgence of this Apostolic See, have been removed and transferred from the number of days of precept, just as the pastors of souls were bound to do while the Constitution *Universa* of Urban VIII, in the year 1642, was in full force, before the days of precept were to be omitted and transferred." And with regard to the transferred days of feasts, we except only this, that, when the divine

[*Latin ed. p. 37*]

CONCERNING THE MASS: 57 > Since the Office has been transferred to the Lord's day, a Mass for the people should be applied by the parish priests, because the Mass, which is the principal part of the Divine Office, should be celebrated together with the Office itself. However, the reasons presented by the Bishop in the aforementioned document seem to be of such importance that his request should be accepted. Indeed, with regard to the faculty that the Bishop requests to dispense from the application of the second Mass for the people, necessity itself seems to demand it. For the Bishop states that when the parish priest is unable to celebrate or to assist in another parish, it is almost impossible to send another priest: 1. because very often another priest is lacking; 2. because when it concerns inclement weather or a sudden illness, there is no time to find a replacement, even if another priest were truly present; 3. because when it concerns illness or another prolonged impediment, it cannot be supplied except by the nearest parish priest, who, after celebrating the first Mass in his own parish, celebrates the second in the principal parish of the impeded priest. Therefore, the second principal parish is deprived of the Mass. However, it is certainly a principle that no one should be held to the impossible. Therefore, it seems necessary to grant the Bishop the faculty to dispense, in the aforementioned circumstances, with parish priests who are impeded on Sundays or feast days from celebrating the second Mass for the people. Furthermore, the scarcity of revenues requires that the parish priest not be obliged to apply another Mass for the people during the week, provided that the faculty to dispense from the second Mass for the people has been granted for the sake of that scarcity, especially on suppressed feast days. Moreover, it is not new, according to the Sacred Congregation, that this may be granted for just causes. Indeed, it is clear that this has been done, as evidenced by the Decrees of the Sacred Congregation in Mindonen, on July 20, 1854, among the Summaria precum proposita. Regarding the remission concerning the Masses not celebrated for the people of the second parish on suppressed feast days, which should have been applied during the week, it also seems that a faculty should be granted, taking into account the scarcity of revenues, and the practice of the Sacred Congregation. Therefore, in the

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aforementioned circumstances pertaining to particular parishes...

[*Latin ed. p. 38*]

58. CONCERNING THE MASS FOR THE PEOPLE: Some maintain this, and otherwise, the Bishop may affirm that he can grant an indulgence; therefore, it should be clear that the request of Bishop C. should be received favorably in all respects.

RESPONSE: After the proposed matters were presented and considered in the Congregation of the Council on May 9, 1874, a response was issued: Regarding the absolution, after each Parish Priest has celebrated one Mass, for the grace of absolution concerning the aforementioned omissions; as for the dispensation, the Bishop, with the faculty to grant a dispensation as requested, and in the circumstances expressly stated therein, burdened by the conscience of the Bishop himself, for a period of five years, upon his word to the Most Holy.

THEREFORE, IT IS UNDERSTOOD:

1. Pastors, to whom the care of souls has been entrusted, are bound by divine law to offer the sacrifice for them, on Sundays and feast days, even if they are suppressed.

2. Parish Priests who are in charge of two distinct parishes are bound to offer two Masses on feast days, either by themselves, if they have the ability to do so, or through others, if they lack that ability, or on another day of the week, notwithstanding the consideration of their income.

[*Latin ed. p. 39*]

39 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS CONCERNING THE NULLITY OF RELIGIOUS PROFESSION, dated January 6, 1874. The matter in question has come to light. Brother Caietanus G., who was today admitted to the Minor Orders, was born in the city of S. on November 28, 1849, and received the religious habit on October 26, 1864, among the Conventual Minors. After a full year of probation, he made his simple vows on November 1, 1865, in accordance with the Encyclical Letters *Neminem latet*, in which, among other things, it is prescribed: "that, after the completion of probation and novitiate, as prescribed by the Holy Council of Trent, the Apostolic Constitutions, and the statutes of the Order, the novice should make his simple vows, after having completed the age of sixteen years, as established by the same Council of Trent, or a greater age, which perhaps is required by the statutes of the Order itself, approved by the Holy See." However, an error occurred in the letters issued by the Episcopal Curia on the occasion of the expedited vesting, in which the young man was written down as having been born on September 29, 1849, instead of November 28, 1849, and this error gave rise to the contro-

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versy. It appears certain that the superiors of the religious order, giving full credence to the testimonies, did not suspect the true age of the young man before the year 1869, in which new testimonies were requested, and granted on February 16, with a view to the tonsure and the reception of the Minor Orders by Brother Caietanus G., and which clearly express his true age, having reached the hands of the aforementioned superiors. As for Caietanus, if credence is given to his statements, which have not been convicted in any way, he himself did not begin to seriously doubt his true age, and the nullity of his first profession, until...

[*Latin ed. p. 40*]

40. IT IS NOT THE CASE that a religious profession made before the legitimate age is invalid, except in the year 1809, with other testimonies received which referred to his true age. Having made the profession of simple vows, he comported himself in all things as if truly professed, and likewise was treated by his Superiors as such. Before his solemn profession, he was sent to another convent of his Order, where, after three years and 70 days from his first profession, that is, on January 10, 1869, he made his solemn profession without any objection, either from himself or from anyone else; afterwards, knowing, as he himself stated, that firstly, his first profession of simple vows had been made before the legitimate age, and secondly, that this profession was null because of the lack of age, and consequently that he had not, in any way, remained for three years before his solemn profession under the simple vows, as prescribed by the Most Holy Divine Name, Pope Pius IX, under penalty of the nullity of the solemn vows, he also judged his solemn profession to be null, and, within the terms of the Constitution *Si datam hominibus*, on October 20, 1871, he presented a formal petition to the Ordinary, so that he might be declared free from all bonds of vows. After lengthy investigations and discussions, on January 10, 1873, the sentence was issued by the Judges designated by the Benedictine Constitution, in the first instance, regarding the nullity of the solemn profession; from this sentence, the Defender of the regular professions, ex officio, immediately appealed to the Holy Congregation, and the cause was presented under the formula of doubt written at the bottom.

AS TO WHAT REMAINS REGARDING THE NULLITY OF THE PROFESSION. The Consultor, to whom the task of giving his opinion in this matter was entrusted, divided his argument into three parts, namely: 1° He undertakes to inquire whether the profession of simple vows made by Brother Caietano G. should today be considered valid according to the old law, abstracting from the Decree of June 12, 1858, by which the tacit profession was entirely abolished; 2° Whether, assuming that this Decree

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should today be considered, the said profession...

[*Latin ed. p. 41*]

THE NULLITY OF RELIGIOUS PROFESSION 41. Whether a profession is to be considered valid, and what follows concerning the validity of solemn vows? 3°. If a case were to arise where doubt existed, should a judgment be rendered rather in favor of the nullity or the validity of the solemn vows? And concerning 1, it is noted that this profession was undoubtedly null from the very moment of its utterance, due to the decree issued by the Council of Trent, but it is doubtful whether a tacit profession intervened, either at the moment in which Caietanus, suspecting nothing of the nullity of the profession, and acting as if he were a professed, reached the age considered legitimate for profession, or at some later moment: and whether this tacit profession would immediately validate the previously invalidly emitted profession. In this matter, a most intricate controversy exists among the Doctors, as is evident from Fagnano (Cap. Significatam, de Regularibus), who, with many authorities brought to light, examines this question, as well as from Ferraris (V. Regularis Professio), who recounts the most famous Mirifolensis case, in which, with great erudition, and citing numerous texts of law, judicial decisions, and the opinions of Doctors, the judgment was rendered in favor of the nullity of the profession. Both opinions agree on this principle: that if both the Religious and his Superiors perform acts that imply a tacit profession, such as the continuous wearing of religious habit, the taking of a vow in chapter, etc., and if, moreover, there exists in both the Religious and his Superiors a true will to profess and to be received into the Order, then a tacit profession is immediately established after the legitimate time has been completed. But in the case proposed, does a sufficient will to profess and to be received exist? Those who argue for the validity of the profession answer: Affirmative, and they attempt to prove this by arguing that both wills were undoubtedly present at the moment of the invalidly emitted profession, and that the perseverance of this will is clearly evident from the external acts freely performed by the Religious and his Superiors, which imply a profession. Therefore, according to the cited Doctors, there is no...

[*Latin ed. p. 42*]

42. CONCERNING THE NULLITY of religious vows, there is a deficiency in the case proposed with regard to the requirements for the validity of a tacit vow. Those who argue for the nullity of the vow claim that there is not sufficient consensus, neither from the Religious nor from his Superiors. Indeed, both parties had consensus in the act of making the vow, but once the vow is made, and neither the Religious nor the Superiors suspect its nullity, the subsequent actions no longer contain, as is necessary, the intention of making a vow, or of admitting to the vow. These actions are performed

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on the supposition that the vow already exists and is valid, and not with the intention of inducing the vow, since they assume that the vow has already been made. Therefore, according to these Doctors, there is clearly a lack of consensus in this case for the tacit induction of a vow, which is certainly necessary. There is also a third opinion, which distinguishes itself somewhat from the preceding ones. According to Fagnanus and other Doctors, in order to resolve the proposed doubt, it is necessary to diligently consider what the Religious and the Superiors would have done, if they had known of the nullity of the vow at the very moment when the legitimate time was completed. If, upon becoming aware of the nullity, they nevertheless would have wished to make and receive the vow at that moment, then, according to this opinion, a tacit vow is immediately induced, because there is sufficient consensus from both sides. On the contrary, if, knowing of the nullity, they would not have wished to make or receive the vow, then a tacit vow is completely absent; because the legitimate consensus necessary for the vow is lacking. Let us illustrate this with an example. If the Superiors, before the expressed vow, treat the Novice with the utmost kindness, but after the vow is made, they govern him with an iron rod, so that the Novice, bound by the bond of the vow, is almost driven to despair, then certainly, when the legitimate age is completed, if the Novice knew that his expressed vow was null and void, he would immediately, abandoning the religious life, leave for the world. Likewise, let us suppose that the Novice, before the vow, feigns humility and behaves obediently in all things; but immediately after the vow is made, he becomes insolent. Certainly, when the legitimate time is completed, if the Superiors know that the expressed vow is null...

[*Latin ed. p. 43*]

45. The nullity of a religious profession would, and would be, sufficient to immediately return him to the world. – Conversely, in contrary cases. – And thus, this third opinion cannot be reconciled with the opposing opinions of Doctors and Tribunals. It asks: 2. Whether the validity, or rather, the confirmation of said profession of simple vows can still be maintained after the Decree of June 12, 1858, in which these words are found: "XI. To validly dispense from solemn vows after simple vows," a *professio expressa* is required, and therefore, *professio tacita* is *omni modo abrogata*. To this question, the Consultor Negali responded, and consequently, he dispenses with the vow of nullity, both of the simple and the solemn profession. And in truth, have Canonists ever deduced the confirmation or ratification of an expressly professed profession that was null? Certainly, because, after a subsequent tacit profession, at the moment when the legitimate time was completed, this profession was understood to be truly valid, healing the nullity of the prior profession. But today, "*professio tacita omnino abrogata est*." Therefore, in this case, this profession does not exist, nor could it have any effect, nor could it heal the prior profession, and therefore,

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this profession remains invalid, just as the solemn profession remains invalid, which, according to the Decree of February 7, 1862, does not subsist, unless a full three years have elapsed from the taking of simple vows. Therefore, the judgment, from which appeal is made before this Holy Congregation, must be confirmed. But the Defender objects: these words, "*Professio tacita omnino abrogata est*," indeed signify that a tacit profession cannot subsist by itself alone; but they do not signify that a tacit profession cannot subsist if it is followed by, and confirms, an expressly professed profession that was previously null. He defends this proposition based on the analogy that the profession, which is a spiritual marriage, has with carnal marriage. He adds, that it is well known that the Council of Trent completely annulled and rendered invalid clandestine marriages. By this, it is signified that a marriage that is totally and in every way clandestine can no longer be maintained. But if the marriage has already been publicly celebrated, according to the law, but was null and...

[*Latin ed. p. 44*]

44. THE INVALIDITY OF A RELIGIOUS PROFESSION, due to a hidden defect of legitimate consent, is null; and if, afterward, this consent is privately given, it becomes valid immediately, at the very moment of this giving. A clandestine marriage is valid, notwithstanding the Decree of Trent, so that the parties are not obliged to celebrate the marriage again before a priest. This healing of a prior marriage does not apply only to the single case in which a public marriage is null due to a lack of legitimate consent, but also in other cases of nullity; for the Doctors teach that, once the impediment is removed which was the cause of the nullity, and the consent of the parties persists, a marriage that was null is immediately validated (so that the Church wills it), without...any new celebration before a priest and witnesses. - Let this doctrine be applied to the spiritual marriage, which is a religious profession. Once the impediment is removed and the consent of the parties (that is, of the religious and the superiors) persists, the religious profession, which was null, is immediately validated, notwithstanding the most recent Decree, which must be understood not absolutely, but moderately, according to the interpretation of the Decree of Trent concerning clandestine marriages. But is such an argument valid? It seems not, because: 1. While there is some analogy between marriage and a religious profession, there is not an all-encompassing equality, so that the argument from one case to the other is very weak. 2. The meaning of the Council of Trent is transmitted through the conclusions of the Doctors, through the decisions of the Tribunals, and through the pronouncements of the Apostolic See, so that the common and customary interpretation must be admitted as certain, even if it perhaps seems contrary to the words of the Council of Trent at first glance. But there is no opinion of the Doctors, nor a decision of the Holy See, from which even the slightest indication appears

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that the aforementioned Decree should be understood contrary to its most clear and manifest meaning: "A tacit profession is ENTIRELY abolished." 3. Although several authors extend the hidden validation of a marriage that is null not only to the case of nullity arising from a lack of consent, but also to the case of nullity arising from another hidden defect which cannot be proven, nevertheless, no author has dared to extend this validation to...

[*Latin ed. p. 45*]

45. The declaration of nullity of a religious profession cannot extend to the case of nullity arising from a defect which is likely to be externally proven (St. Ligorius, Book IV, n. 15). Indeed, the matter at hand concerns a defect which is not only likely to be externally proven, but which, as is evident, has been externally and undeniably proven. Therefore, the argument presented is invalid.

4. The tacit abrogation of a religious profession, mentioned in the aforementioned Decree, must be understood not partially and restrictively, as the Defender argues, but simply, absolutely, and universally. What did the Most Holy Fathers, Pope Pius IX, intend to achieve with this new ordinance? Certainly, they intended to finally provide a remedy for the doubts which often arose from tacit professions, since it is possible to endlessly doubt the nature and existence of those acts which constitute a tacit profession, and even more so regarding the nature and existence of the internal and reciprocal consent, which undoubtedly are required for the validity of a tacit profession. If the aforementioned clause is understood absolutely, the remedy is immediately effective; but if the clause is to be understood with a limitation, not for all cases, but only for certain cases which are not mentioned in the Decree, and which must be explained by analogies derived from very uncertain considerations regarding carnal marriage, it is clear that the old doubts are not resolved, but rather, on the contrary, a new and most difficult series of doubts is added. Therefore, the remedy offered by the most wise Pope would serve no purpose, except to increase inconveniences. Therefore, the Decree must be understood according to the meaning of the words, that is, absolutely and simply, in every respect. Therefore, the expressed profession of simple vows is not validated, and thus, the profession lacks its foundation. Even if this were not admitted at all, it is evident that the opinion which favors the validation of the profession is at least noticeably weakened by the recent Decree. But before the Decree, this opinion was not certain, but only probable. Therefore, after the Decree, if it is not false, at least it must be considered improbable, and not applicable to our case.

Finally, regarding the third point, it is argued that even if the case were doubtful, the opinion should still be given in favor of the nullity of the

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profession.

[*Latin ed. p. 46*]

46. ON THE NULLITY OF RELIGIOUS PROFESSION. It must be considered that the burden of the religious life ought undoubtedly to be judged as very grave, since it is certain that any vows, even the most perfect and difficult, can, with full right, be altered by the one who made them at the entrance to the religious life. Therefore, in order that such a weight be imposed only on one who is undoubtedly obligated to bear it, it must be certain that he is, without doubt, bound to do so. It does not suffice to argue that, although the religious life may be full of labors, it nevertheless abounds in spiritual goods, and offers the safest path to obtaining heavenly rewards; and consequently, that he to whom permanence in the religious life is imposed is not burdened by this obligation. For these advantages of the religious life are true, and most true for him who perseveres spontaneously and joyfully in the service of religion. But, when it is a question of a religious person who desires to leave, and who is prepared to endure a long series of difficulties in the hope of finally obtaining a definitive judgment regarding the nullity of his profession, for such a person, the religious life has nothing but torments and sorrows, and it is not only easier for him to return to the world, but perhaps it becomes more dangerous than the very freedom enjoyed by secular people. Therefore, if there cannot be certainty of a valid profession, it is neither fitting nor just to impose such a burden on unwilling shoulders, according to the opinion of Gregory of Nazianzus: "If the matter is doubtful, let humanity and weakness prevail" (Or. 39). Furthermore, another point worthy of note is that, when it is a question of religious life, the Church is difficult to dispense from, but easy to absolve. Therefore, in the case concerning nullity, the judgment must be made in favor of validity. The defender, appointed by office, first observes that there were four episcopal courts that participated in the process. Although two of these observed all the solemnities required by law, it cannot be judged in the same way regarding the others, since they neglected to summon the defender of the profession in all judicial acts, and to hear the witnesses. Therefore, the process, and the judgment dependent upon it, are judged to be infected with an incurable defect of nullity.

[*Latin ed. p. 47*]

Regarding the nullity of the religious profession: Having noted these external circumstances, we now turn to the internal considerations that suggest the validity of the profession of Father Caietan G. Indeed, he himself states that the Council of Trent, in Session 25, Chapter 15, concerning religious orders, requires that no one be admitted to the profession unless they have completed the age of sixteen years. However, experience has shown that this is not always sufficient to remove the serious inconveniences and

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doubts that often arise concerning the validity of the profession. Therefore, the Most Holy Pope Pius IX, with the greatest wisdom, prescribed in his Encyclical Letter of March 19, 1857, that those who have made simple vows should not make their solemn profession until three years have passed from the time of the declaration of those vows. Given these premises, the argument that the lack of age invalidates the profession of Caietan G. is not persuasive. Since the age of nineteen years is required for the solemn profession, and he declared his solemn vows on January 10, 1869, he was not only within the canonically prescribed age, but had already completed twenty years, one month, and twelve days. Therefore, all that was prescribed in the aforementioned Encyclical Letter was observed. Furthermore, the objection that the nullity of the simple vows necessarily entails the nullity of the solemn profession is not well-founded. It is well known that, just as a novitiate, so too the profession of simple vows is nothing other than a means and a path to entering into the solemn profession. But when the law prescribes a certain form for a definitive act, it certainly does not render the final act invalid if that form has been observed in part, provided that the act has been duly completed; and when the form relates to a certain effect, it is sufficient that it be fulfilled through that which is equivalent and produces that effect. *Card. De Laca, de finibus, Disp. 87, n. 5; Rota Decis. 306, n. 5 et seqq., before Merlino.* Therefore, we conclude that the profession of Father Caietan G. is valid. Even if it were to be argued that the nullity of the simple vows would affect the solemn profession, and that both acts should therefore be considered as null, the fact that Father G. remained in the Institute after the declaration of his solemn vows would, in itself, have cured any defect and validated the profession. It is true that, after the declaration of solemn vows, it is necessary to...

[*Latin ed. p. 48*]

4. THE ADVANTAGE of a religious profession requires that both the explicit profession and the tacit one have been entirely abolished; but this holds true only in the case where someone, having made simple vows, would contend to be religious solely because they had performed religious duties for several years. However, the opposite occurs when a solemn profession has been regularly made: therefore, if the illegitimacy of the simple vows is alleged due to a lack of age, the controversy is resolved according to the rules in force before the promulgation of the Encyclical Letters of 1857, and the Declaration of 1858. However, the Defender argues that, according to these rules, if someone had made a solemn profession without the canonical age, the defect was remedied if they had lived as a religious for a year and had performed the duties of a professor, since it was then presumed that they had renounced the nullity and had made the invalid profession valid. See Bardoni, *De Prof. Rei*, Chapter 1, question 17. There, it is written: "If a young man, having completed the year of novitiate, con-

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fesses, even if he has not completed his sixteenth year, without a doubt his profession is null due to the impediment of age. BUT, WHEN THAT TIME HAS PASSED, and the impediment no longer exists, but the legitimate age is present, as it can be properly demonstrated, the null profession can be ratified." Finally, the Defender considers it to be alien to the truth and not easily believable that Father Caietanus G. ignored the defect of his own age; and therefore, he believes that one must stand firm on the validity of his profession. With these and other things brought to light, the purpose was to resolve the doubt: Whether and how the judgment of the Episcopal Court in this case should be confirmed or rejected. RESOLUTION. The Sacred Congregation of Bishops and Regulars decided on February 6, 1874, to "Petition the Most Holy [Father] for a dispensation as a precaution." THEREFORE, IT IS UNDERSTOOD: 1. That a solemn profession, whether knowingly or unknowingly made, is null and void unless it has been previously...

[*Latin ed. p. 49*]

49. No one can remain for a complete period of three years in the profession of simple vows.

2. To validly pronounce solemn vows, a profession must be expressly made after the simple vows; therefore, a tacit profession is entirely abolished.

3. A tacit profession cannot be valid, not only by itself alone, but also if it follows an express profession that was previously invalid.

4. In cases of doubt as to whether a profession has been validly made or not, the presumption should be in favor of liberty.

[*Latin ed. p. 50*]

ORATORII, May 1st, 1874. There exists in the city of P. a vast expanse of land enclosed by walls on all sides, with an entrance through a large gate, open on the side facing the city's forum. This place, to which the people gathered to attend public spectacles, is called the arena. Below this arena, and precisely opposite the aforementioned gate, stands a baronial palace, and nearby rises a very elegant chapel, which Henry Serovegno, at the beginning of the fourteenth century, erected from its foundations. This chapel was decorated with a bell tower, as well as three marble altars, and celebrated paintings by the renowned Giotto, and was dedicated to the Blessed Virgin Mary under the title of Charity. Concerned for the growth of the divine cult, Henry ordered that the prior, together with three priests, should perform the divine services there, and that a personal residence should be established for them, so that, as the founder stated, the prior, together with the priests, clerics, and servants, should always reside there personally. Consequently, in the year 1308, the aforementioned prior, with the consent of the territorial parish priest, was entrusted with the care of

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souls within the limits of the arena, with the approval of the Bishop. Considering that the founders of churches are obligated to endow them, the pious founder assigned certain goods to it, but with the condition that they could never be alienated, even with the consent of the Pope: the following possessions, as stated in the instrument of endowment of the year 1317, were assigned, given, delivered as a dowry, and into free and perpetual possession, so that these possessions could not be mortgaged, sold, or given away, even with the license of the Supreme Pontiff. Finally, the right of presentation to the benefice, to himself, and to his...

[*Latin ed. p. 51*]

51 chapels were reserved for the heirs. This endowment, together with the completed reservations, was accepted by the Bishop and sanctioned by his authority. However, in the year 1443, the property of this family, with the exception of the endowment belonging to the Church, was publicly announced and sold by the officials of the Republic of Venice, due to the infidelity of James Serovegno. This, with the passage of time, together with all its appurtenances and patronage of the aforementioned chapel, passed to the brothers Foscari. Furthermore, since these individuals doubted the continuation of the patronage, which they believed had been lost by James Serovegno due to his infidelity, and in order to proceed more safely in this matter, they inquired about its continuation and obtained from the Most Holy Pope Sixtus IV a Bull, dated May 15, 1476. Meanwhile, it is worth noting that this type of chapel was subject to the visits of the Bishop, and a report was made regarding them, stating: "The public chapel under the portico of Saint Mary of Arena was visited." Indeed, it was treated as such by the civil authority during the difficult times of Italian governance. Currently, this patronage is enjoyed by the family G., who considered the aforementioned chapel as private property and intended to sell it. However, the municipal council intervened, and a resolution was requested to preserve this significant work of art, in which it was concluded: 1. That the aforementioned church of Arena is a public church; 2. That it is not subject to the law of suppression, since it is a chapel belonging to the parish of Saints Philip and James of the same city, and therefore must be open for divine worship and transferred to the aforementioned parish. Therefore, in the month of September of the year 1869, and precisely on the 29th day, a commission of laymen, to which an ecclesiastical official appointed by the Curia was attached, was sent in with armed force to take possession of it. The family G. was distressed by this matter and appealed to the Patriarchal Curia, requesting that it be decreed: 1. That the aforementioned chapel is private property; 2. That it is exempt from any ecclesiastical jurisdiction, whether parochial or Episcopal; 3. That the parish priest of Saints Philip and James be ordered to abstain from any parochial activity concerning

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the aforementioned chapel.

[*Latin ed. p. 52*]

52. THEREFORE, he argued thus before the Patriarchal Court; which, after examining the matters to be considered, definitively pronounced: 1. That the chapel under the title of Saint Mary of Charity in Arena is a public oratory, and of absolute ecclesiastical property; therefore, 2. the request of the plaintiffs is to be rejected, and 3. they are condemned to pay the costs of the lawsuit. The family G., bearing this sentence with displeasure, formally lodged an appeal before the tribunal of the Sacred Congregation for Bishops and Regular Canons, to which the business was entrusted, which, having received this petition, and having carried out all the customary procedures, proposed the case for discussion in a full session of the Most Reverend Fathers. The discussion was as follows: The defender, who defends the rights of the Court, first of all argued that the chapel in question is a public oratory, and by no means a private one. To prove this, he first pointed out that the place was granted to the Church by ecclesiastical authority for divine worship, and is therefore entirely exempt from commercial activity, as stated by Gonzalez in *Cariceli*, regulation 8, chapter 5, paragraph 26. Furthermore, the defender demonstrated that the chapel in question has always been considered a public place of devotion, not only by the instrument of endowment of the year 1317, in which these words are found: "in honor and reverence of the aforementioned Virgin, Mother of God, and of our Lord Jesus Christ, etc.," but also clearly from the will of the founder himself, who, in order to promote external worship, established an ecclesiastical ministry there, which is certainly not found in private chapels. Therefore, since it was public from the beginning, it cannot be changed into a private one by private authority, especially since such places are the property of the Church of God, and cannot in any way belong to a private estate, as Boniface states in question 1, chapter 3. Fagnan, in the second part of the book of decrees, title "de censibus," chapter 22 and 28. De Lucca, *Miscellanea Ecclesiae*, discussion 1, paragraph 33. DEFENSE OF THE COURT. To further strengthen this argument, the defender presented the inscription of the dedication of that chapel, taken from the book of Soardoni, entitled "On the Antiquity of the City of P.," in which the following is read: "But Henry, a valiant soldier, consecrated..."

[*Latin ed. p. 53*]

53. The oratory, here, establishes a venerable feast. For, the temple of God is solemnly dedicated. It is as though it might eternally merit being blessed. Since this place is dedicated to God in a solemn manner. Furthermore, the public nature of the chapel must be demonstrated by the pious intention of the founder, by reserving the offerings made there for the needs of the building and its ornaments: for the founder states that "offerings

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must be collected and preserved by those appointed by the Rector, and distributed and expended for the building, and the needs, and the ornaments of the Church itself, and for sacred purposes." Therefore, it follows that, together with the bell tower, the oratory was constructed to summon the faithful to hear the sacred rites, which is prohibited in private chapels by the text in chapter 10, title "de privileg." Indeed, and other additions are not lacking to prove its public nature, for besides the erection of the tower, the chapel consists of three immovable stone altars, by which the oratory is shown to be a public one, as Pignaf. states in volume 1, consultation 92, numbers 7 and 9: "It must be the case that in a church or public oratory there is a stone altar... as well as a bell tower and bell, which properly belong to churches and public oratories." And if to these things one adds the annual celebration of the image to which the chapel is dedicated, as well as the procession prescribed by the laws of the city in this chapel, with the authorities, both civil and ecclesiastical, of the place present, there is no doubt that the public nature of the chapel is abundantly evident. Indeed, it is forbidden by the sacred canons to hold public processions in private chapels: "It is indeed established in our precepts that no one should hold a public procession in a church, or in private chapels, which has not been dedicated with the permission of this Holy See, lest the founders, through deceitful trickery, should violate the statutes of the rules," c. certain, dist. i. Nevertheless, the patron does not overlook the lack of a document of consecration of the aforementioned oratory; although this act was lost in the fire of the archives of the Curia P., there are not lacking proofs that are equivalent to it. Indeed, considering the instrument of endowment completed in the year 1317...

[*Latin ed. p. 54*]

In the Episcopal palace, in a chamber, in the handwriting of the Venerable Father Lagni, mention is made of the following words concerning the Bishop, P. de, regarding the initial consecration: "D. Henricus Scrovegnus, considering that he had built a church in the city of P., in a place situated at Arena, and that founders and instigators of churches are accustomed to endow such churches, and that if this endowment is omitted at the time of the laying of the first stone and at the time of consecration, it can be constituted at any time for the benefit of the church." From these words, it clearly appears that there is no doubt about the consecration of the chapel, otherwise the founder would not have spoken in this way, nor would the Bishop have added his own authority to the act. The patron, relying on the authority of Pignatelli, volume 1, consultation 92, number 24, argues that this presumption must be admitted. There, among the other characteristics for defining a public oratory, the visit by the Bishop is mentioned: "or if it appears to have been visited by a Bishop, to whom the proper right of visiting private oratories does not belong, it is permissible for him to access

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them, in order to see how they are, and whether they are properly maintained..." However, from the visit of the Bishop, it cannot be understood whether the oratory was private, because this is not subject to Episcopal visitation. Nevertheless, it is a fact that the Bishops, or their Vicars General, have visited the oratory in question, so that there can be no doubt about its publicity; for it is known in law that private oratories are not subject to Episcopal jurisdiction: "Private oratories are not under the power of the Bishop with regard to the right of demanding procuration, and consequently not with regard to the right of visitation, because procuration is by law annexed to visitation." Fagnan, in the cited work, chapter on authority, number 2. Therefore, if the chapel were not public, the Ordinary would not have entrusted the care of souls to the inhabitants of the area of Arena, even though they did not belong to the Scrovegno family, which is why it happened that, in the year 1476, as testified by the cited Bull of Sixtus IV, a parish was established there, under the name of St. Mary of Arena, etc., and that the public church was not only observed by the governors of the Republic of Venice, but also by the Italian government itself. Therefore, if the census records are examined from the year 1811, it will undoubtedly appear that it was considered to be among the sacred places within...

[*Latin ed. p. 55*]

The boundaries of the parish of the Holy Philip and James exist, and that parish has declared a chapel as its subsidiary. The patron demonstrates that the difficulty in the initial instance concerns whether the chapel should be public, and that it must have a public entrance on a public road, according to the testimony of Devoti Inst. Canon. lib. 2, tit. 7, sect. 3, §. 32, where it is written: "A public chapel is one that has a public entrance, and to which all of the people have access; a private chapel is one located in private homes, and one whose use is determined by the owner." It is clear that the propriety of a place does not depend on the position of the entrance, but on the ability of everyone to access it. For it makes little, or no, difference whether the entrance is on a public road or in an atrium, provided that it is open to all the people. This theory is confirmed by several examples of chapels, especially the chapel of Saint Anicente in the City, which, although located within the grounds of the Altempsian palace, is nevertheless considered public. The fact that access to the chapel is gained through an atrium does not, in any way, prohibit the patron from doing so, but rather demonstrates the right of passage that belongs to the faithful from the time of its initial establishment, and which must be preserved by successors. To support this argument, several resolutions of the Sacred Congregations are cited, taken from Ferraris, *Bibliotheca Canonica*, under the word "Oratory," and according to which the author, in note 86, states that a chapel does not cease "to be" public, even if it has an entrance in a front atrium or courtyard of a palace, according to the decrees of the Sacred Congregations

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of Extraordinary and Regular Affairs in Ostia, on March 20, 1798, and of the Sacred Congregation of the Council in Campsana, on May 11, 1704, and August 8, 1705, in the last of which it was judged that a chapel with an entrance in an atrium within the walls of a palace is public. Therefore, it is clear that the chapel demonstrates its public nature, and that both the founder and his successors have the right to present to the aforementioned chapel, not by right of ownership, but by the right of patronage. In the instrument of endowment, the following is stated: "That there must always be a designated instituted person there, presented by the aforementioned Lord Henry, through his heirs, who, by the presentation of the Prefect, who is to be instituted in that church, will exercise the right and name of patronage over himself and his successors."

[*Latin ed. p. 56*]

56. CHAPELS > The heirs, or to whom they have granted their rights, retain, and intend to retain, the patronage. Indeed, it is a matter of unquestionable law that the right of patronage cannot exist unless in places founded with the consent of ecclesiastical authority (text, chapter 15, on patronage). This is confirmed by the learned Doctors, especially Vivian, in *Praxis Jurisprudentiae*, book 3, chapter 1, on patronage, number 38, where he states: "The right of patronage belongs to a religious chapel, and is founded with the consent of the Bishop; which I do not understand to apply to a private chapel located in a private house." However, facts have shown that these claims have extended to the Serovegno family, and to others to whom such a right has been granted. Furthermore, the patron is obligated to defend the inviolability of the chapel, not only as a public temple, but also as a parish annex, which history has demonstrated in various instances.

FROM WHAT REMAINS IN FAVOR OF THE FAMILY G.

On the contrary, the patrons of the family G. argued that the disputed chapel was not a public one, but a private one. To demonstrate this, they asserted that a chapel is not public unless it has a public entrance and is open to all the people (Devoti, loc. cit.). To support this claim, they cited passages from the case of Coimbra, before the Most Holy Congregations, in which the essential qualities for constituting a public chapel are described: "namely, that it is erected with the license of the Bishop in a public place, and is so separated from private houses that access to it is not possible through them, and that there are no windows in the houses through which one can see into the chapel, and that free access is open to all from the public road." However, neither the topographical description of the chapel nor the closed gates fulfill these requirements. In this matter, they advocated for the practice of the same Holy Congregation, citing two decisions re-

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ported by Monacell, volume 5, title 5, form 2, numbers 6 and 7. In that place, the aforementioned author, after stating that public chapels are subject to pastoral visitation, asks: "Is a chapel to be considered public for this purpose, if it is found to be built within the courtyard of a palace?" And the Holy Congregations, in the Neapolitan case, responded: "Since it was doubted whether the prohibition of the Council would apply equally to a chapel located in a courtyard, it was said that it would not; therefore, it cannot be said that a chapel is present..."

[*Latin ed. p. 57*]

ORATORIES 57: » Among domestic walls, especially when it has a public entrance; for the term "house" does not refer to a courtyard. * Furthermore, referring to a case very similar to this one in Ostuni, in which the matter concerned a prohibition issued by the Bishop against a public oratory located in the palace courtyard, and it was argued that it was subject to visitation, when the Baron appealed, a resolution of this nature was issued, as testified by the author himself in the aforementioned place: "The Holy Congregation of Bishops, to which the Baron had appealed, proposed to the Most Eminent Lord on March 20, 1698, that, after removing the gates that impede access to the courtyard, or by opening the door of the oratory to the public road, and closing all access from the church to the palace, and prohibiting the inappropriate use of the upper room, the Bishop should proceed to the execution of the brief, removing the prohibition." From this resolution, it seemed that the Sacred Congregation, with the additions of the clauses regarding the prior removal of the gates, etc., or the opening of the door of the oratory to the public road, intended to declare that an oratory is not subject to the Bishop's jurisdiction unless the gates guarding access to the palace courtyard have first been removed, or a new door from the public road to the oratory has been opened, so that these requirements were considered necessary to declare it public. Therefore, the defenders considered that the difficulty raised by the opposing party, namely that there were three stone altars in the disputed oratory, was of no importance, since there is no canonical law that prohibits this in private oratories. Moreover, they did not believe that the presence of a bell tower with a bell could help the opposing party, since this had been done by the founder for the convenience of the inhabitants, to facilitate the circuit around the aforementioned altars. Although Pope Celestine III, in chapter 10 on privileges, prohibited the retention of a public bell in a private oratory, he did not intend that this should be a sign that the oratory is public, nor did he intend to prohibit the use of bells in a private oratory. Furthermore, the argument drawn from the annual procession is easily refuted, if one considers that it was within the Lord's power to permit or prohibit it, at his discretion, to open or close the door of the altars. Moreover, they denied that the oratory

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was a parochial church, 1. because the documents to prove this foundation,

[*Latin ed. p. 58*]

58. The canonical erection of the oratory, and the relative endowment, are entirely lacking, 2. because the conditions expressly required by the sacred canons for a valid parish erection are absent. Indeed, it is prescribed in cap. Unio IO, q. 3: "That a Church, which has ten *mancipia* under its jurisdiction, should have a priest over itself; but if it has fewer than ten *mancipia*, it should be joined to other Churches." However, it has been ascertained that ten dwellings within the territory of Arena never existed, but only a baronial palace, together with two small houses; hence, it cannot be said that a parish was established, nor that the commission for the care of those souls was granted to the sacristan by the Bishop with the consent of the territorial parson, but only a simple privilege, since the small number of souls was insufficient to establish a parish de jure. Furthermore, they argued that the qualities necessary for establishing a true ecclesiastical benefice were lacking, for neither did the sacristan reside within the limits of Arena, nor were special revenues assigned to the Church for the purpose of forming its endowment; rather, the sacristan received a suitable sum for the sustenance of his life from the canons, and from the revenues of properties, and also, at the discretion of the lord, other goods were assigned to the sacristan. This is so true that the governors of the Republic of Venice, in the year 1443, when the Scrovegni properties were made public, decreed that, for the endowment of the Church of St. Mary of Charity in Arena, either the houses of Arena, which are outside of Arena, should be given, or should remain to the same Church of St. Mary. But if properties expressly for the Church had been assigned, this provision would have been entirely superfluous. Therefore, they believed that the patrons had found a vain pretext in the *ius patronatus*. For the *ius patronatus*, which is the right, or power, of presenting a cleric to an ecclesiastical benefice (Reiffenst. lib. 3, Decret, tit. 8, c. 1, n. 3), cannot subsist if the endowment, canonical erection, and consequently the ecclesiastical benefice, are lacking. From all of this, they clearly concluded that the Bull of Sixtus IV, by which the right of *ius patronatus* was newly granted to the chaplains, was vitiated by a flaw, because the brothers Foscari explained to the Pope that 1. the oratory was public, 2. the Church was parochial, and finally, 3. it was a benefice subject to the exercise of *ius patronatus*.

[*Latin ed. p. 59*]

ORATORIES 59. These are matters brought forth from various places. However, two decisions of the Holy Congregation of the Council, promulgated for the common good, are relevant to this topic. The first concerns a case from Vercelli, dated August 3, 1675, of which this is the nature. The Bishop of Vercelli, concerned with ecclesiastical discipline, during a visi-

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tation of the Sacred Thresholds to the Roman See, to which all churches ought to be subject, reported, among other things, that there was a disturbance "in the oratory of Castellenghi," which, although open to the piety of all the rural inhabitants, was, within the walls of the castle itself, reserved only for the family of the lords, and that, moreover, during the night, even in these days of peace, the gate was closed; and it was added that even on the more solemn feast days, Mass was celebrated against the will of the parish priest. The inhabitants of the aforementioned castle were warned by him to abstain from such solemn feasts according to the customary concession, but they showed no obedience. When questioned, the aforementioned lord presented six witnesses, whose testimony established "that the oratory in question was very old, and beneficial to all for hearing Mass..." In the aforementioned castle, there were formerly ten fireplaces, although now only two remain. The oratory is furnished with sacred objects, and since time immemorial, on the night of the Nativity of Our Lord, a solemn Mass has been celebrated there; former Bishops visited it, and left it in possession; indeed, the Reverend Father Gloria administered the sacrament of Confirmation there, and from him it was also learned that a solemn procession was held there, and finally, a priory was established there, confirmed by the judgment of the Ordinary of Vercelli. Therefore, the aforementioned Lord of Castellenghi petitioned that the aforementioned oratory be declared public, and that it be permitted to celebrate Mass there even on the more solemn feast days, according to custom. The Holy Congregation judged that the oratory in question was public. The second concerns the Oratory of Saint Severus, dated September 20, 1845, in which this case was debated. The Sangro family held the Duchy of Torre Maggiore, and there they possessed a ducal palace, formerly built in the form of an ancient fortress, with a high, wide moat, and four bastions at its extremities. In the interior of one of these bastions, an oratory was constructed.

[*Latin ed. p. 60*]

60. The chapel was constructed, where a stone structure was erected, and a fixed altar was placed with the inscription "Altare privilegiatum perpetuum" (Perpetually privileged altar); there was also a small tower with its bell, so that the people could be called to the sacred services, which was also customary during the more solemn festivals, and when the Duke was present; the entrance, however, since it could not open outwards beyond the wall, was located in the large courtyard, through which the inhabitants of that place always had access to the chapel, and it was their custom to gather there, even to hear Mass, in order to fulfill the ecclesiastical precept. Since there had been doubts about its public nature, an appeal was made to the Congregation of Holy Councils, so that it might express its opinion on this matter. Furthermore, before the proposition of the doubt was presented, several matters worthy of note were brought up, among

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other things, under the heading: "However, if, at some time, a dispensation has been granted regarding the public road near the entrance, this is a concession on the condition that the Lord of the manor, by a solemn and public instrument, obligate himself to allow free access to everyone, and completely renounce his private jurisdiction!" Fagnan, chapter on these (regarding the privileges of chapels), Dom. c. 3, n. 5, which cites the resolution of the Holy Council of November 16, 1636, lib. 13, decrees, page 128. And further: "Where, however, the Most Reverend Fathers have declared the chapel in question to be public, they should consider whether custom alone is sufficient to maintain public access through the courtyard; or rather, whether the obligation mentioned above should be imposed by the prince, or whether some other provision should be made, according to the procedures of the Holy Congregation of Bishops and Regular Canons in Ostunen, March 20, 1698, that is, by previously removing the gates." Therefore, the doubt was proposed: "Whether and how a chapel located in the palace of the Torre Maior should be declared public in this case, etc." The response was: "Affirmatively, with a caution, by the Bishop, according to ancient custom, so that free access to the chapel is allowed to all, preserving the parochial rights." These, and other considerations, were presented, and it was proposed to resolve the matter.

[*Latin ed. p. 61*]

TO THE RECTOR: 61. Concerning the question of whether and how the judgment of the Patriarchal Metropolitan Curia should be confirmed or refuted in a particular case.

RESOLUTION. The Sacred Congregation of Bishops and Regular Canons, on May 1, 1874, judged that an oratory is to be considered a public, ecclesiastical place.

THEREFORE, IT IS UNDERSTOOD:

I. An oratory is to be considered public when it is found to have been consecrated by a superior and dedicated to divine worship.

II. In the absence of documentary evidence to prove the public nature of an oratory, this can be demonstrated through conjectures, the principal of which is if its entrance faces a public place, is open to all, and has an attached bell tower.

III. However, it is not necessary that oratories be considered public simply because they are located in the courtyards of palaces, provided that certain signs of publicity are present there, especially if some ecclesiastical benefice is established therein.

IV. Among the signs by which it can be demonstrated that an oratory is public, even if located in a palace courtyard, are the presence of a bell with a bell tower, which is permitted only in public oratories; the celebration of

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Mass on the titular feast day and on other solemn days; and the visitation of the same oratory by Bishops.

V. Private oratories are not subject to the visitation of Ordinaries for the purpose of demanding dues, although in the future, a Bishop may access such oratories in order to ascertain their condition and decorum, either through a direct visit, a notification, or an inquiry.

VI. Public oratories, although under the dominion and authority of their patrons, cannot be alienated, nor can their status be altered by the will of these patrons.

[*Latin ed. p. 62*]

62. FROM THE SACRED CONGREGATION OF RITES: DECREE. In order to augment and more widely propagate the cult of Saint Boniface, the Bishop and Martyr, who led the Germanic peoples and other neighboring nations to the faith of Christ, whose commemoration is found in the Roman Martyrology on the ninth of June, numerous Bishops and Cardinals of the Holy Roman Church, especially from Germany and England, seized the most auspicious opportunity of their presence in the city, when the dogma of the Immaculate Conception of the Blessed Virgin Mary was solemnly proclaimed by our Most Holy Pope Pius IX. They offered fervent prayers to the same Most Holy Father, that he would deign, by his pontifical authority, to extend to the entire Church the Office and Mass of the aforementioned Saint Boniface, so distinguished by his virtues, and concerning the Catholic Religion, and this Holy Apostolic See, which had not yet been granted. Or, if it seemed fitting to his great wisdom, that at least the recitation of the Office and Mass be permitted in Germany, and throughout England, so that all might venerate Saint Boniface, his son, his Apostle; and to the remaining dioceses, both within and outside of Germany and England, if their Bishops should deem it advisable, they may petition for this matter. Our Most Holy Lord, graciously receiving such prayers, granted on March 29, 1855, that in all of Germany and England, in those dioceses which have not yet obtained the concession of the Office and Mass of Saint Boniface, the Bishop and Martyr, from the Apostolic See, those who wish may recite them; and furthermore, that outside of Germany and England, this concession may be granted to Bishops who request it, by the Sacred Congregation of Rites. When the Bishops of Germany convened at the Ecumenical Council of Vatican, they renewed their prayers that the Office and Mass of Saint Boniface be extended to the entire Church; and when, in addition to these prayers, the requests of the prelates of England and Holland were added, his Holiness, imploring the favor of Saint Boniface, zealously aided the German Bishops for the good of the Catholic Church.

[*Latin ed. p. 63*]

DECREE 65: Concerning those who are of the Eastern Rite (and also

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the faithful entrusted to their care, so that they may sincerely retain the faith which they received from Boniface), the requests were submitted to the particular Congregation of Sacred Rites, so that it might express its opinion. This particular Congregation, after considering the reasons and also the circumstances, responded as follows: Affirmative for the entire Church, under the lesser rite. This decree, referring to me, the undersigned Secretary of the Congregation of Sacred Rites, was confirmed by His Holiness; and it was granted that the Office and the Mass should be recited and celebrated respectively in the entire Church, according to the model approved by the Sacred Congregation, under the lesser rite, on the fifth of June, as assigned in the Martyrology; that the Office be transferred to the same day, provided it is not of a higher rite; and provided that the rubrics are observed. All that is contrary is hereby repealed. June 11, 1874. CONSTANTINE, BISHOP OF OSTIA AND S. K., CARDINAL PATRIZI, PREFECT. Seal: Dominic Bartolini, S.R.C., Secretary.

[*Latin ed. p. 64*]

64. DECREE OF ROME. It is certainly most celebrated in the Church, the memory of Saint Justin the Martyr. Having been imbued with the vain wisdom of the pagan philosophers, he believed in the Lord Jesus Christ, who is the true Wisdom; and, after the Apostles, he, of most excellent genius, labored greatly, so that he might lead both Jews and Gentiles to embrace the same Christian faith. He also attacked the heretics, as testified by Irenaeus, who drew many testimonies from his writings. He refuted the philosophers, slanderers who inflamed hatred of Christians among the princes and the people, not only through published writings, but also through public debates, exposing their lies and ignorance. Finally, having so vigorously defended what he believed, he received the crown of martyrdom, being sealed with his blood. Therefore, several Eminences and Roman Cardinals, and more than three hundred Sacred Prelates who had come from all parts of the world to the Ecumenical Council in Vatican, presented a petition to the Most Holy Lord Pope Pius IX, in which they requested that the illustrious Martyr Saint Justin be honored with due observance in the universal Church, with an Office and Mass. For, among the errors of our time, rationalism holds a prominent place, which, rejecting all divine revelation, maintains that only human reason should be followed, by whose means men can be led to the full possession of truth and goodness with lasting progress; therefore, these Venerable Prelates hoped that, just as Saint Justin, while living on earth, refuted the sects of the philosophers, and bravely defended the cause of the Church before the princes of this world, so now, surrounded by heavenly glory, he might dispel the darkness of errors, and commend the same Church to God with his most powerful patronage, and protect it more happily. The Most Holy Lord, graciously accepting their prayers and requests, referred the matter to the special Congregation of

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Sacred Rites for examination. This special Congregation, after due deliberation, decided to respond affirmatively to the petitioners, but under a lesser form. This decision, faithfully reported to me by the Secretary of the Sacred Rites, was ratified by His Holiness; and he ordered that the Sacred Congregation of Rites grant this concession to the Bishops who requested it. Furthermore, he ordered that the feast day be celebrated by the Clergy of the City and by all those who use the aforementioned Clerical Calendar, on the 14th of April, with a lesser form, with an Office and Mass, according to the model approved by the Sacred Congregation of Rites, observing the prescribed rubrics. Notwithstanding any contrary regulations. June 11, 1874. CONSTANTINE, BISHOP OF OSTIA AND VELLETRI. CARDINAL S. R. C. PATRIZI, PREFECT. Seal of the Dominicans, S. R. C. Secretary.

[*Latin ed. p. 65*]

From the Most Holy Congregation of the Council of Trent concerning Alms of Masses. February 28th, March 28th, July 25th, 1874. "humiliari » precum». The Most Reverend Archbishop addressed the Most Sacred Prince with a humble letter, explaining: "Both in his Archdiocese, and in the other dioceses of the Kingdom, the income of the parish priests is calculated and established by the civil authorities, in consultation with the Ordinary. Among these are included the foundations of Masses, those belonging to individual parishes, and public functions, such as the celebration of funerals or the blessing of marriages, for which a certain stipend is assigned to the parish priest by the Ordinary for each Mass, or foundation, or occasion, and which stipend constitutes an integral part of the parish benefice. It often happens, however, that parish priests, to whom these Masses are considered as part of their due income, are hindered by legitimate reasons from paying them themselves. Therefore, he inquired whether parish priests who are hindered should be obliged to entrust the celebration of these Masses to another priest, so that the entire stipend established for the celebration of such Masses is paid, or whether it suffices if the Ordinary, or the Archbishop, determines a lesser amount, so that what remains can be safely retained by the parish priests to whom these Masses are assigned as part of their income. Furthermore, he added that it has been a nearly universal and ancient practice that parish priests, to whom such larger stipends are also assigned in the public census records, when legitimately hindered, pay the stipend to assisting priests or other beneficed clergy for the Mass, or for the singing or reading [of the Mass]." Upon receiving such a supplication, a decree was immediately issued: "Acta Tora. VIII, fase. L XXXVI. b.

[*Latin ed. p. 66*]

6*6 Concerning OFFERINGS FOR MISSES, a communication was received from the Secretariat of the Holy Congregation of Councils on June

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30, 1937, concerning "Marian Votive Masses." 1. A synoptic discussion. OBSERVATIONS FROM THE OFFICE. Firstly, it was noted that, according to Benedict XIV, *Inst. Eccl.* 56, no. 1, the stipend, which, according to the common discipline of the Church, is given to priests for the purpose of obtaining a suitable offering for the Sacrifice, in place of bread and wine, which were formerly offered, has been established. This custom, or rather, this practice, since it has been accepted by the entire Church, cannot be condemned without shame, for it is fitting that he who serves at the altar should live off of it: hence, the Sacred Canons, as cited by Fagnanus, in *Cap. Fraternitatem de Sepulturis*, no. 83, do not consider poverty, but rather the reward for labor, since no one serves with his own expenses. *Cap. Cum ex officii de praescript.*. This reward, however, the priest does not receive as a price for the Mass, which would be simoniacal, but rather as sustenance for life, as stated by St. Thomas, quoted by Benedict XIV, in the aforementioned passage, no. 4. Nor should he take the entire sustenance, but rather a portion of it from the stipend, as Benedict XIV continues, in the aforementioned passage. For priests, if they are secular, must enjoy titles or benefices; if they are regular or mendicant, they receive their sustenance either from the alms of the faithful, or they are supported by possessions and the revenues of a monastery. From this, it follows that offerings for Masses were introduced into the Church solely for the purpose of providing for the support of priests, and not in order that they might be enriched, and much less so that they might be given an opportunity for sordid gains: since sacred things can in no way be put to the use of commerce or negotiation, nor can they be permitted to the administration of lay people. However, because of the insatiable desires of men, offerings for Masses have given rise to countless inconveniences, and therefore, the most holy Church has, at various times, enacted laws and decrees to remedy this situation: which have been carefully examined by Benedict XIV, cited, *Inst. Eccl.* 56, *De Synod.*

[*Latin ed. p. 67*]

SUPPLEMENTUM EXTRA ORDINEM, cap. 9. De Sacrificio Missae. L. 3, cap. 21. Et ut non sint adducentes leges Ecclesiae antiquae in hac re, audiamus Tridentinum in Sessione 22, de observatione et evitando in celebratione Missae: "Cum multa iam, sive temporum vitio, sive hominum incuria, et imo improbitate, irrepserint quae a dignitate ipsius Sacrificii aliena sunt, ut ei debita honores et cultus ad Dei gloriam et fidelis populi aedificationem restituantur, decernit sancta Synodus, ut ordinarii Episcopi locorum ea omnia probare atque e medio tollere sedulo curant ac tenentur, quae vel avaritia, idolorum servitus, vel irreverentia, quae ab improbitate vix sejuncta esse potest, vel superstitio, verae pietatis falsa imitatrix, induxerint."

"Atque ut multa paucis comprehendantur, in primis, quod ad avaritiam

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pertinet, conditiones, pacta, et quicquid pro Missis novis celebrandis datur; nec non importunas atque illiberales eleemosynarum exactiones potius quam postulationes, aliaque huiusmodi, quae a simoniaca labe, vel certe turpi quaestu non longe absunt, omnino prohibeant."

Huic Concilii decreto, quo quidquid avaritiam turpemve quaestum sapit, e Sacrificio Missae proscribitur, accesserunt celebres illae Constitutiones seu Decreta de celebratione Missarum, Urbani VIII auctoritate edita die 21 Iunii 1625 per Constitutionem quae incipit "Cum saepe," et postea additis aliis resolutionibus ab Innocentio XII, decimo Kal. Ianuarii 1697 per Constitutionem Apostolicam quae incipit "Nuper innovata et confirmata." Ex his nonnulla quae ad rem faciunt excerpere juvabit.

In §. 6. Pontifex, "omne damnabile lucrum ab Ecclesia removere volens, prohibet Sacerdoti qui Missam suscepit celebrandam cum certa eleemosyna, ne eamdem Missam alteri, parte eiusdem eleemosynae sibi retenta, celebrandam committat." In §. 7. autem, omnibus haec mandatur: "Eleemosynas manuales, et quotidianas pro Missis celebrandis ita demum iidem accipere possint, si oneribus antea impositis ita satisfecerint, ut nova quoque onera suscipere valeant; alioquin omnino abstineant ab huiusmodi eleemosynis."

[*Latin ed. p. 68*]

68 CONCERNING OFFERINGS FOR MASSES: "Let those inscriptions be removed from the churches, such as 'Alms for Masses,' or similar phrases, under the same penalties for the offense itself, so that the faithful are not deceived by this means." The penalties were as follows: secular clergy were to be immediately forbidden from entering the church, while religious were to be deprived of all offices, both active and passive, and were to be subjected to perpetual disqualification from holding any office whatsoever. Regarding this paragraph, various questions arose later: 1. Whether it is absolutely forbidden for those who have not fulfilled their obligations to accept new offerings; and 2. What if they can fulfill all obligations at a suitable time? 3. What if the one offering the alms, upon hearing of the impediment, consents that the priest celebrate the Mass as soon as possible? The response was: "It is not absolutely forbidden; therefore, even if they have not fulfilled the obligations already undertaken, they can still accept offerings for the celebration of Masses, provided that they can fulfill all obligations within a reasonable time. However, if the obligations undertaken cannot be fulfilled within a reasonable time, but the one offering the alms knows this and consents that the Masses be celebrated only when the obligations have been fulfilled, the decree does not prohibit the acceptance of the offering for those Masses, to be celebrated according to the benefactor's consent."

Furthermore, § 18 states: "Since many inconveniences arise from the fact that obligations for Masses are accepted beyond one's ability, let all be

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warned... not to accept, in any way, perpetual, temporary, or even manual Masses, for which they are unable to provide, whether they are accepted directly or through intermediaries." And after a few words, it is added: "They must completely cease, or abstain, from receiving or accepting, either directly or through intermediaries, any other Masses, whether perpetual, temporary, or manual."

When it was asked in § 15, no. 15: "Can administrators of a large church accept offerings for Masses to be celebrated, if they can only fulfill these obligations after a long time, lest the other services of the church, devotion, and the cooperation of the faithful be diminished, as they say?" the response was: "They cannot, unless with the consent..."

[*Latin ed. p. 69*]

Sir R: • • [. , ; SYMBOLUM MISSAE: Concerning those who offer alms. To facilitate the observance of this decree, it is customary for this Sacred Congregation to order, as noted by Benedict XIV, cited in Inst. Eccl. 56, no. 14, that a table be conspicuously displayed in the church, which clearly states that within a certain time, the sacred Masses that can be celebrated in that church or altar must be celebrated; and that any remaining Masses should be celebrated in another church or at a different altar within the same church. In this way, those who offer alms will have a complete understanding, and will be able to contribute to piety more easily, as they see fit. Among other things prescribed in the aforementioned decrees to prevent abuses, it seems most effective to place a table in each sacristy, on which the Masses to be perpetually celebrated are described; and to keep two books, in one of which perpetual Masses are noted, and in the other, additional Masses, and the satisfaction for them. After these decrees and after several propositions condemned by Alexander VII, it seemed that all avenues for corruption had been closed. Nevertheless, the greed of some ecclesiastics and laymen increased, especially in the Piedmont region, as testified by Benedict XIV in his Constitution, dated June 30, 1741, so that the same Pontiff was compelled on the same day to issue another Constitution, which begins with the words "Quanta cura," in which he inflicts ecclesiastical penalties on those who, when collecting Masses, arrange for them to be celebrated by others, retaining a portion of the alms for themselves. This practice is certainly reprehensible, and "contrary to the will, whether expressed or implied, of those who offer alms." It must be understood in this way; for in reality, "each person wants the Masses to be celebrated in the church to which, led by the incentives of religion and piety, he offers alms, or in which someone perhaps was then present, rather than in another church entirely unknown to him." This, of course, is like the actions of a merchant, driven by the desire for dishonest gain, and is not only subject to the suspicion and vice of avarice, but also to the crime of theft, and therefore, it is the cause that many good people, to whose knowledge such

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commerce comes, are greatly offended, and abstain from offering alms for Masses to be celebrated. To remedy this deplorable abuse...

[*Latin ed. p. 70*]

70. Concerning the collection of alms for Masses, since men, when compared, "are more easily persuaded by the fear of punishment to obey salutary warnings," – the Bishop commands – that by means of a decree, it should be made known to all, that whoever collects alms or stipends of greater value for the celebration of Masses, as local customs or Synodal statutes require, and who, retaining a portion of the same alms or stipends received, either there or elsewhere, where smaller stipends or alms are given for the celebration of Masses, causes Masses to be celebrated, shall, in addition to any other penalties they may impose, incur the penalty of excommunication; and that a cleric, or any priest, shall incur the penalty of suspension, from which no one can be absolved except by the Roman Pontiff himself, or by one constituted by him, unless at the point of death.

From the most recent Constitution of His Holiness Pope Pius IX, dated October 14, 1869, which begins with "Apostolicae Sedis," only the major excommunication, which in general affects those who collect, seems to apply to both laymen and clerics, while the suspension, which is mentioned therein, is removed against these. Indeed, it is stated there, section 2, number 12: "Those who collect alms of greater value for Masses, and who profit from them, by causing them to be celebrated in places where the stipends for Masses are usually of lesser value."

Furthermore, in the aforementioned Constitution of Urban VIII, it was established that Masses should be celebrated within a short time, and a controversy arose among the Doctors concerning what time should be considered "short." Therefore, this Holy Congregation, on July 17, 1765, resolved: "A short time should be understood as within a month," lib. 19 Decret, page 597.

These things, which have been decreed by the Apostolic See at various times, sufficiently demonstrate how diligently and zealously the Church has striven, at all times, to remove any semblance of dishonest gain or negotiation concerning the alms for Masses, and to prevent anything that is not fitting for sacred matters, or that might give rise to suspicion of dishonest gain. Therefore, with these things in mind...

[*Latin ed. p. 71*]

Following the established principles of law, it must be determined whether, in the conduct of the parish priests concerning whom we are speaking, in the case of Kosso, there exists anything that might be considered worthy of censure, or deserving of correction. From the pronouncements of the Roman Pontiffs, the following rule appears to be safely established: the entire collection taken up at Masses must be given

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to the priest celebrating, whoever he may be; and this both to prevent the abominable practice of profiting or trading in such a sacred matter, and also for the sake of justice. However, this rule is not so general that it can be applied in absolutely all cases; indeed, several exceptions are made. And concerning the decree of the Sacred Congregation of the Council, which prohibits a priest who has accepted a Mass to be celebrated with a certain offering, from assigning the same Mass to another, retaining a portion of that offering for himself; it was asked of the same Sacred Congregation whether this decree applies to benefices, that is, whether the rector of a benefice, who may have Mass celebrated by another, is obligated to give to the celebrating priest a stipend proportionate to the revenues of the benefice? The Sacred Congregation of Cardinals of the Council of Trent, with the authority granted to it by the Most Holy Lord, responded to this question: "It does not apply, but it is sufficient that the rector of a benefice, who may have Mass celebrated by another, should give to the celebrating priest a suitable offering according to the custom of the city or province, unless something else has been stipulated in the foundation of the benefice itself." But Saint Alphonsus, in Tractate 13 on the Holy Eucharist, in book 6, number 321, after explaining his doctrine concerning the detestable greed in the collection of offerings for Masses, condemned by the decree of the Sacred Congregation of the Council, approved by Urban VIII and confirmed by Innocent XII, adds as follows: "However, this prohibition is excepted in the case where someone gives a larger sum, not so much with a view to the Mass, as out of friendship, poverty, gratitude, kinship, etc. In such a case, the priest may retain the excess, assigning the celebration of another Mass to another." A second exception is made in the case where a priest is assigned a ce-

[*Latin ed. p. 72*]

72 ON THE ALMSGIVING OF MISSES: The celebration of Masses, generously and entirely of your own free will, will remit the excess to you; for just as He can remit the whole, so too can He remit a part. However, this is by no means to be admitted, if you declare that you have received a greater price and ask the Priest to remit it; or if you ask him whether he consents to you retaining a portion; for then he cannot retain it, even if he agrees, because this is stated in the *bulla*: "How great is the care" (Benedict XIV), which is asserted to be a most deplorable abuse, forbidden by many Popes who desired to reform (words of the *bulla*), namely, that no Priest can receive a larger price for the celebration of a Mass than another, and that, even if the same Priest, celebrating and consenting, indicated that he had received a larger alms, he should not receive a smaller payment.

"The third exception is for a Beneficiate, who can rightly entrust the celebration of the Mass to another Priest, with a suitable payment according to the custom of the place, without surrendering the entire amount of the

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fruits. Thus, Croix, *ib.* 4, no. 280; Roncagl. c. 6, q. 8, R, 2; Viva in *dict.* prop. 9, no. 9. Suarez d. 86, Sect. 3, Pal. p. 14, no. 9, and Saimant. c. 5, no. 13, with Vasquez, Layman, Rone, and others. And it is also clear from the decree of the Sacred Congregation *ad pr.* from Innocent XII in the *bulla* *Nuper*, no. 8, where it is said that the decree of Urban does not have local force, but is sufficient, so that the Rector of a Benefice, who can entrust the celebration of the Mass to another Priest, may give the Priest celebrating a suitable alms, according to the custom of the city, unless it has been stipulated in the foundation of the benefice. Layman, *de Sacrificio Missae*, lib. V, Tract. V, Cap. 1, no. 13, q. 3, ad Dubium: Whether he sins and acts unjustly who, having received a more abundant payment for a Mass, entrusts it to another to say, retaining a portion of the payment for himself; to this he answers: "If he is a Curate or Parish Priest, to whom a larger alms is offered for the Mass, he can fulfill the obligation through another, giving him a sufficient payment, retaining the rest for himself." Thus, Sotus, lib. 9, q. 3, art. 1. But the author of *Amostazius* has developed this discussion and wisely resolved it in his work *de Causis piis*, lib. 22, cap. 4, no. 30. There, "If a larger payment is not granted for the sake of the Mass itself, but for the sake of the person..."

[*Latin ed. p. 73*]

FOLLOWING! I. It is permissible for the Priest himself to receive the offerings for the Mass, because he is the one offering, or because he has earned the merit of service, or because of his dignity, and even if Cardinals were to declare otherwise, he can still retain them without any fault, by assigning the celebration of other Masses to another priest for a fixed price, without depriving him of anything; for this is a donation made in excess to the person. Therefore, nothing is owed to another priest from this excess. Thus, Diana, tract. 14, resol. 12; Trullench, de. t., cap. 8, dub. 12, n. 11; Laymann, lib. 5, tract. 5, Cap. 1, num. 13; Henao, Sect. 5, num. 48.

Under number 31, it continues: "Chaplains, Beneficiaries, and Parish Priests are not exempt from the obligation of giving the entire stipend, retaining a portion for themselves, in those Masses which they are obligated to celebrate by reason of their benefices; but if they have several such benefices, they may properly assign the celebration of Masses to others for the agreed-upon stipend, retaining a larger salary for themselves; for the excess is not granted for the Mass itself, but by reason of dignity and sustenance." Thus, the Holy Congregation declared, as testified by Garcia, diff. 10, dub. 5, num. 3; Possevin, dict., cap. 2, num. 18; Cened., Canon., qq. q. 27, num. 12; Barbosa, ad Concil., Sess. 25, de Reform., Cap. 4, num. 20; Diana, tract. 14, resol. 11; De Lugo de Luchar, disp. 21, sect. 2, num. 30; Pasqutil., q. 970; Henao, sect. 5, num. 37, and sect. 7, n. 64; Mendoza, de ordinibus, disp. 9, q. 5, num. 44.

RESCRIPT. The Holy Congregation, having considered the matter in

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the meetings of February 28th and March 28th, 1874, issued a definition through the decree "Dilata"; finally, on July 25th, 1874, this question was again proposed, and the following response was given: "Considering that the alms for Masses, about which we are speaking, hold a proper place in the prayers for the souls in Purgatory, it is permissible for a parish priest, if he cannot satisfy the needs himself, to entrust the celebration of Masses to another priest, using the alms as an ordinary contribution of the place, for Masses that are read or sung."

THEREFORE, IT IS UNDERSTOOD:

I. The alms for Masses are received by priests for the purpose of being introduced into the Church so that they may contribute to the support of the priests.

[*Latin ed. p. 74*]

7. Concerning the excesses of alms offered at Masses:

I. Decrees of the Holy Congregation of the Council, confirmed by Urban VIII and Innocent XII, which prohibit the retention of any portion of the alms offered at Masses, are to be understood as pertaining to manual Masses.

II. Therefore, Chaplains, Beneficiaries, and Parish Priests are to be considered exempt from the obligation of retaining any portion of the entire stipend, in those Masses which they are obligated to say by reason of their benefices.

III. Indeed, if Parish Priests endeavor to obtain suitable alms for extraordinary Masses, those [Chaplains, Beneficiaries, and Parish Priests] are to be considered released from the aforementioned obligation.

IV. Hence, Parish Priests, Chaplains, and Beneficiaries, in the expressly stated cases, can, with the best of right, entrust the celebration of the aforementioned Masses to another Priest, to whom the ordinary alms of the place are assigned, whether for Masses said or sung, retaining for themselves a larger salary.

V. Those who, in violation of the Apostolic Constitutions, collect alms of greater value for Masses, and derive profit from them, by having them celebrated in places where the stipends for Masses are of lesser value, incur the greater excommunication, reserved to the Roman Pontiff, by this very act, whether they are laymen or clerics.

[*Latin ed. p. 75*]

75. CONCERNING OFFERINGS FOR MISSES. March 28, July 25, 1874. Summary of prayers. Among the various controversies that frequently arise concerning offerings for Misses, the following were proposed by the Archbishop, O.S.C.O., and it is fitting to transcribe them in his own

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words: "In the year 1868, I stated that in this Archdiocese there exist many foundations for Misses, for which certain stipends are established; these stipends are assigned to be paid by the ordinary to certain priests, either by the Archbishop himself, or by the founders or benefactors of certain churches; it often happens that these priests are prevented from celebrating the Misses as they previously did, either because of the numerous manual stipends offered by the faithful, which they could not refuse, or for other legitimate reasons; at the same time, I proposed the question of whether, in such cases, it would be permissible for a priest, who is legitimately prevented from fulfilling these foundations, to grant to another priest, to whom he could assign the Misses, only the ordinary stipend. The Congregation of Cardinals of the Council of Trent, in its interpretation, on July 18, 1868, responded that the entire stipend must be paid." (Furthermore, the Archbishop, whose requests were mentioned in the aforementioned supplication in the year in question, asked whether, if it were determined that the entire stipend must be paid, he would be granted the faculty of granting to each priest a license to retain, with a safe conscience, whatever was left over from the ordinary stipend: to which request the response was: It is not expedient). "Indeed, other difficulties have arisen in this matter, and I humbly beseech that a suitable remedy be applied." For many foundations have been established in the parochial churches.

[*Latin ed. p. 76*]

76 iv: CONCERNING MISSES OFFERED FOR CHARITY: Misses which are sung, whether for the living or for the dead, to which a larger sum is assigned by the founders and administered by the Church authorities, from which the parish priests, to whom, by diocesan law and custom, the celebration of these Masses belongs, receive a larger diocesan alms; however, no priest is expressly called by the founders to celebrate these Masses.

II. In the celebration of marriages and funerals, the rights pertaining to the parish priest are not paid in a lump sum, but a certain portion is assigned for each specific act required to perform these functions. Hence, a certain alms, also larger than that for other manual Masses, is fixed by the Ordinary both for nuptial Masses and for funeral Masses, the celebration of which, by law and custom, belongs to the parish priests.

III. Throughout the year, many alms are offered to the parish priests by the faithful for sung Masses, either according to a tariff established by the Ordinary, or even larger sums are given spontaneously. However, since parish priests are sometimes prevented by illness, absence, or other sacred duties from celebrating Masses in the three cases mentioned above, their place is taken by other priests, either those assigned to assist in those churches, whose salary is paid by the Church authorities, or even priests from outside. Hence, the question arises: whether the parish priests, in

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these same three cases, should hand over the entire alms to the priests who take their place; or whether it is permissible for them to retain a portion for themselves and give a smaller alms to the celebrant? And if, in these cases, a portion of the alms can be lawfully retained by the parish priest, the further question is asked: whether the diocesan alms, established by the Ordinary, for sung Masses should be paid by the celebrant to the same parish priest, or rather, whether it should be paid for sung Masses.

DISCUSSION: OBSERVATIONS FROM THE OFFICE. In order to clarify the questions proposed, certain principles are laid down. Firstly, it is certain that the Church is not...

[*Latin ed. p. 77*]

ON THE ALMS OF MISSES 77: It is the opinion of some that all profit derived from this source is inherently corrupting, and that even the very appearance of such gain should be eliminated; and that priests should be motivated solely by a holy purpose in performing such works. This, however, is not entirely clear, as will be seen from the doctrines presented in the preceding discussion on the alms of Misses. Nevertheless, it is certain that a just compensation can be received for the celebration of Masses, not as a price for the Mass itself, which would be simoniacal, but as a wage for the sustenance of life, as is commonly taught by theologians and canonists, including St. Thomas, apud Bened. XIV. De Synod. Dioeces. Hb. V, cap. 8; Reiffenstuel, lib. V, Decret. tit. 3. De Simonia IO, n. 185 seqq. It does not matter whether the celebrant is rich or poor, nor whether he has sufficient means from ecclesiastical benefices to support himself. For, as noted in the preceding discussion with the authority of Fagnani, the Sacred Canons do not consider poverty in the assignment of a stipend, but rather the merit of the labor, since no one serves for his own wages. However, it must be understood that this refers not to the labor that is inseparably joined to the very act of celebration, which would be simoniacal, but to labor that is external to the celebration itself. Amostazo de Causis Piis, lib. 2, Cap. IV, p. 2. But in this matter, Reiffenstuel should be heard, who, in Theol. Moral, tract. V, dist. 2, qu. 4, n. 33, writes marvelously in his own style: "When speaking of manual labor, of fatigue and distress in the sacred ministrations, such as in the celebration of Masses, the administration of the Sacraments, or the consecration of churches, etc., and whether it is lawful to give or receive a price for such labor, a distinction must be made, and indeed, the Doctors agree that for labor or obligation that is accidentally joined to the sacred ministry, something may be lawfully given and received as a price; as happens when a priest must travel a long distance to celebrate Mass in a certain church, or to administer a Sacrament, or when a chaplain is obligated to remain in his spiritual duties throughout the year, especially during times of plague, and the like. The reason is that such labor or obligation is, in itself, something of value, and is only accidentally connected to the spiritual ministry here and

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now. Otherwise, it must be said regarding labor that is intrinsic, or that is, by itself and necessarily, connected to the sacred ministry."

[*Latin ed. p. 78*]

7. Concerning the price of Masses: It is forbidden to set a price for a Mass; for such a practice is simoniacal. However, it is permissible to give or receive something as a just payment or for the honest support of the ministers of the Church.

Regarding the payment for a Mass to be celebrated, the entire sum must be given to the one who has borne the labor and inconvenience of the celebration; nor can the one who receives the payment and entrusts the celebration to another retain anything for himself, lest he incur the reprobation of Urban VIII, in the Decree concerning the celebration of Masses, and the censure of the Apostolic Constitution of Benedict XIV, beginning with *Quanta cura*, and the most recent Apostolic Letter of the Holy Father.

Pignatellus, in *Consult. Can.*, t. IV, cons. 227, n. 7, explains this matter with no less clarity than truth, and it serves greatly to illuminate the present controversy: "It must always be understood," he writes, "that the priest who transfers the obligation of celebrating a Mass to another, must give the entire payment; for he has no just title to retain any part for himself, and therefore he harms both the one to whom he transfers the obligation of celebrating the Masses, and the one from whom he received the payment. For, when the one who receives the payment acquires it only by reason of the obligation to offer the sacrifice, as if it were attached to the sacrifice itself, by the very fact that he renounces the obligation, he renounces the title to retain the payment, and by retaining it, he acts against the will of the one who gave it. If it was intended for the support of the celebrant, and not for the profit of another, it matters not that he exhibits a fixed payment. For, when a large payment is given, the entire sum is given with a view to the burden that is imposed, and with the intention of giving for the sake of the ministry... therefore, it passes with the burden itself, and belongs to the one who fulfills the burden. Therefore, he who retains a part of the payment, retains that which is justly due to the one who provides the ministry, and thus does not fulfill the obligation."

Therefore, even if a suitable and fixed payment is given to the celebrant, it is still an injustice to him, because not all that is due to him is given. For, the entire title...

[*Latin ed. p. 79*]

Concerning Alms Offered for Masses: It is acquired that the alms, however small, be with him who celebrates, and not with him who first receives the alms, because while he does not celebrate, but transfers the burden to another, the entire title which he held is dissolved; and if the entire alms are not exhibited to the celebrant, it is not given, which is what is justly due

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to him.

From these things it is clear that the title to receive the alms arises from the obligation to celebrate, and is entirely transferred to the celebrant. However, sometimes other titles can be given to the celebration itself, extrinsic to it, for which a larger common payment is granted; in which case, he who transfers the burden of celebrating to others, may lawfully retain for himself, beyond the customary regional amount, or the amount predetermined by the Bishop, whatever exceeds that amount.

And first, such an extrinsic title can be given when it concerns Masses offered for parish duties, benefices, or chaplaincies. For then, the parish priest, the beneficiary, or the chaplain, if they entrust the celebration of the Masses to which they are bound by reason of their office to others, are not obliged to repay the amount corresponding to the fruits of the benefice, but only the customary amount, because these, together with the benefice, immediately become the owners of all the fruits, and they make only the celebrant a participant by title of celebration. The same seems to be said of removable, non-collated, and purely lay chaplaincies, which have a fixed salary similar to a benefice, as St. Alphonsus states in book 4, treatise 3 on the Eucharist, doubt 1, number 321. And in this case also, the obligation to which the chaplains are bound provides a title distinct from the celebration itself, by which they may retain a portion of the alms for themselves. This opinion was followed by the Holy Congregation on March 15, 1745, which decided that it is permissible for a removable chaplain to retain a portion of the stipend, provided that a certain income is established annually for the chaplaincy, and a permanent chaplain is assigned; otherwise, if for each Mass celebrated, a certain alms is given to this chaplain.

Secondly, such an extrinsic title can also be given when it concerns perpetual Masses offered to a priest. Those who undertake to perpetually celebrate these Masses...

[*Latin ed. p. 80*]

80. Regarding offerings for Masses, another burden is assumed which is distinct from the Mass itself, and according to the teaching of Reiffenstuel, this is of a value that can be estimated, and therefore, those who receive such offerings seem to be able to claim for themselves whatever exceeds the common tax. And this is perfectly fitting with the intention of the founders, who are to be considered to have left more generous offerings for such Masses to be perpetually celebrated, not only because of the Mass itself, but also because of the burden with which the priests are burdened who undertake to celebrate them, and so that accurate and perpetual satisfaction might be provided for them. Thus, after Viva, La Croix, Gobat, Pa, and others, they state with St. Alphonsus, in the aforementioned place, that a legacy can also be given for Masses, but with the distinction that when a legacy is left to someone with the obligation of Masses, the number of

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which is predetermined, then the legatee can give the common and manual tax to another to celebrate; and retain for himself what remains; for a legacy is considered a donation, and always contains a lucrative cause, and on this basis, what remains can be retained. The same must be said if the legacy was left not to a person, but to the Church. But if the one to whom the legacy is entrusted is not properly a legatee, but an executor of the legacy, as for example, if the testator says: "I bequeath one hundred to Titus, so that he may say, or have said, Masses," then it is clear that the testator has considered not the person of Titus, but the cause of the Masses, and Titus should be considered not a legatee, but merely an executor of the legacy. In this case, Titus must expend the entire legacy on celebrating the Masses, and retain nothing for himself; provided that the will of the testator was that the generous stipend be used for one hundred Masses, and that the title to acquire it should pass entirely to the one who celebrates the Masses; and that no other title should exist, by which the one who entrusts the celebration of the Masses to another could retain for himself what exceeds the common tax. Amostazo, in *De Causis Piis*, book 2, chapter 4, paragraphs 34 and following. Quarto: In Masses, even those that are external, whether recited or sung, this title can have a place external to the celebration; namely, when a more generous offering than usual is granted with a view to the person, namely, because of his dignity, or office, or poverty, or kinship, or gratitude. St. Alphonsus.

[*Latin ed. p. 81*]

Regarding the *Missae pro Fundatoribus* [Masses for Founders], as mentioned above. In this case as well, the excess of the common tax could be retained, provided it is morally certain that the said excess was offered for this purpose. This doctrine was then applied to three questions proposed by the Archbishop. The first question concerned the singing of Masses in parish churches, for which a more substantial alms was allocated from a designated endowment. Although no priest had been expressly called by the founders to celebrate these Masses, by diocesan law and custom, the celebration belonged to the parish priest. However, the sum allocated for celebrating these Masses was administered by the church's steward. Indeed, this concerns bequests of Masses left to the parish church. The stewards of the church appear to be only executors of the bequests; consequently, they are obligated to hand over the entire sum to the parish priest who celebrates the Mass with singing. But if the parish priest does not celebrate the Masses himself, but entrusts them to others, the Archbishop asks whether the full stipend must be paid, or whether it is sufficient to give the customary manual alms according to the diocesan tax; and, to the extent that a manual alms is due, he further asks whether the alms due should be for Masses read, or for Masses sung. At first glance, since the parish priest is called to sing these Masses by diocesan law and

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custom, the founder, who was obligated to conform to this law, should be considered to have intended to call the parish priest to celebrate them; and therefore, the bequest left appears to favor the parish priest, who, by virtue of this obligation, can retain for himself, whenever he entrusts the singing of Masses to others, whatever remains of the diocesan tax. Nevertheless, if the matter is examined more closely, it will become clear that this bequest was left not to the parish priest, but to the church, and that the stewards, acting on behalf of the church, are its executors, who must hand over the entire stipend to the celebrant; the parish priest, on the other hand, is neither the legatee nor the executor of the legacy, but, among other priests, is called by a kind of precedence to celebrate these Masses, and is given a fixed alms for each Mass celebrated. Therefore, no other title applies to the parish priest besides the very act of celebration.

[*Latin ed. p. 82*]

82. Concerning offerings for Masses, it is fitting that a sum be provided, so that the priest may lawfully retain the excess of the stipend; therefore, the entire stipend must be given to the priests celebrating the Masses, whether they are sung or said. In the second question, the Archbishop inquired whether, in the case of wedding or funeral Masses, when the parish priest entrusts their celebration to others, he can receive a manual offering, retaining the more substantial stipend assigned to him by diocesan law. To this question, it was stated that the rights of the parish priest, according to diocesan law, are not assigned in a lump sum, but in specific portions for each act or function. Indeed, even in this case, when these rights of the parish priest are connected with the very sacrifice, whether in weddings or funerals, and are not easily distinguished from the ministry being performed, it appears that the entire stipend offered for the celebration itself has been given, and that if the one performing the ministry does not receive the whole amount, the intention of the offerers is being defrauded. However, if it is observed that Bishops can, and in some cases must, assess offerings for Masses and take into account in this assessment the labor, travel, solemnity, etc., and therefore also the duties of the parish priest, it is clearly evident that, once this more substantial assessment has been established by legitimate authority, the parish priest immediately acquires the right to retain it for himself, and therefore, with this more substantial assessment retained by him, he can rightfully give the common stipend to the priest celebrating the Mass. But if the offering given to the parish priest is for a sung Mass, then the priest celebrating the Mass must give the diocesan offering for a sung Mass, because the ministry of singing is performed by the one celebrating, and if the parish priest were to retain the stipend for a said Mass, he would profit from the ministry of another, which is reprehensible and forbidden by the laws of the Church. Thirdly, the Archbishop inquired whether,

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whenever offerings are made by the faithful throughout the year for sung Masses, either according to the assessment established by the Ordinary, or even more substantial amounts, the parish priest, when entrusting the celebration of these Masses to others, must return the entire offering, or only the common stipend.

[*Latin ed. p. 83*]

ON OFFERINGS FOR MISSES:

This question, concerning Misses celebrated with singing, is primarily this: Parishes ought to return to the priests the established fee for sung Masses; otherwise, they would profit from the ministry of another, and would deceive the intentions of those offering. For those offering alms for sung Masses intend to receive greater benefits, which they derive from these Masses, as the Theologians teach (see Concina, *Theol. Christ.*, book 3; *De Euchar.*, dissertation 2; *De sacrif. Missae*, chapter 4, no. 17), since in sung and solemn Masses, harmonious singing resounds, external acts of religion are multiplied, the devotion of those present is aroused more strongly, a more splendid worship is offered to God, and therefore, a more abundant spiritual fruit flows from them.

Therefore, the question can only arise concerning an excess of the alms offered to the Parishes for a sung Mass: when may they retain this excess, when it is morally certain that this excess was offered not for the sake of the celebration, or for the sake of receiving greater suffrage or benefit, but with regard to the person of the Parish priest himself? It may happen that the faithful, out of gratitude to their own Parish priests, who have devoted their labors and almost their entire lives to the spiritual benefit of others, offer them a more generous stipend than usual. But this intention of the faithful is not easily presumed, but must either be expressed, or be deduced from unambiguous indications that provide moral certainty.

Indeed, the stipend for Masses is, by its very nature, intended to obtain the fruits of the sacrifice; and when the faithful offer a more generous sum to the ordinary, they intend to receive greater fruits from the Mass, as St. Alphonsus teaches in *Opera Moralia*, in the aforementioned passage. However, it is commonly understood that the intention of the person offering the stipend is to transfer ownership of the money to the celebrant, and not to a mandatary or procurator, as Amjast observes in *Tractatus de Sacram. Ord.*, § IV, on the priesthood, question 2.

Therefore, it seems that Parishes ought to return to the priest to whom they entrust the celebration of sung Masses not only the diocesan fee for the sung Mass, but also the excess, unless it is otherwise morally certain that the excess itself was offered by the faithful for some other reason than

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the celebration.

[*Latin ed. p. 84*]

Regarding the question of whether the parish priest is obligated to pay the full offering for Masses, and whether he can retain a portion of it:

The Holy Congregation of the Council, after careful consideration and discussion, responded on March 28, 1874, to a query raised on July 25, 1874, as follows:

Firstly: The full offering for the Mass must be paid by the parish priest, whether the Mass is said, sung, or chanted.

Secondly: When it comes to the rights of the altar, it is sufficient if the parish priest pays the celebrant the customary offering.

Thirdly: The full offering must be paid, unless there is moral certainty that the excess offering was given with the intention of benefiting the parish priest himself.

THEREFORE, WE CONCLUDE:

I. The obligation to receive the offering arises from the obligation to celebrate the Mass, and is transferred to the celebrant.

II. Therefore, it is forbidden and prohibited by the sacred canons, under pain of excommunication, which is incurred by the very act, and is reserved to the Pontiff, for anyone to retain a larger sum than the customary offering, while the celebrant receives only the ordinary offering. Cf. above, question III.

III. However, if the excess is given for other extrinsic reasons related to the Mass itself, there is nothing to prevent the Mass from being entrusted to another priest, provided that he receives only the ordinary offering.

IV. Such extrinsic reasons are not only found in those who are bound by the obligations of a benefice or prebend, but also in parish priests, provided that the rights of the altar are respected.

V. Indeed, parish priests, and all other priests, are exempt from such an obligation if there is moral certainty that the excess offering was given with the intention of benefiting them personally.

[*Latin ed. p. 85*]

85. CONCERNING DISTRIBUTIONS, AND SERVANTS! II CHORUS. June 20, 1874. Summary of the matter. The Prefect, Archdeacon, and Cantor of the Cathedral Church, in the name of the entire Chapter, presented a suppliant petition to the Most Holy Prince, stating that "the Bishop G., by a decree of May 1, 1807, while the Chapter was in session, expressly derogated from the statutes pertaining to this Council of Trent, Session XXIV, Chapter 12, concerning reforms, establishing that, during periods of

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vacation, that is, absences lasting from three to two months and five days, the Dignitaries, Canons, and Beneficed Chaplains should receive not only the fruits of their benefices, but also the daily distributions. Furthermore, in the same decree, those attached to the Matutinum choir who had completed sixty years of age were exempted from interest, and were assigned the corresponding daily distributions." The Chapter, desiring to review and revise its own statutes in a better form, hesitated concerning the value of the dispensations which Bishop O. had also granted, even as a Delegate of the Apostolic See; therefore, it proposed the following questions to be resolved by the Sacred Congregation. I. Whether these aforementioned exemptions and concessions can be considered valid, and whether, therefore, it is permissible for the Chapter to observe them. II. Whether these same [exemptions] can at least be maintained and observed, by force of custom, after the aforementioned decree was introduced, and have been consistently and without interruption until the present day. The Sacred Congregation, having received this petition, issued a decree on May 28, 1872, stating: "To the Bishop, for information, and with a vote, having heard the Chapter in writing, and having transmitted the Chapter's resolution, and a copy of the statutes and a copy of the disposition of Bishop G. by which he derogated from those statutes: he should report on the revenues and burdens of the Canons."

[*Latin ed. p. 86*]

86. CONCERNING THE DISTRIBUTION, the Reverend Bishop, obeying the mandates of the Holy See, transmitted the prescribed portion of the statutes, and a copy of the Bishop of G.'s decree, in which the matters therein are most clearly set forth, as they are explained in the aforementioned document. He also transmitted the resolution of the Chapter, which reads as follows: "On May 13, 1872, on the second day after the Feast of the Completion [of Easter], a Spiritual Chapter was held, to which were present: the Reverend Praepositus, the Archidiaconus, the Cantor, the Poenitentiarius, and other canons." The Praepositus requests that the Chapter approve the aforementioned document, so that it may be presented to the Holy Congregation of the Council for the resolution of doubts, having been read in the preceding session. The Canon V. objects to the proposal to appeal to the Apostolic See for the resolution of doubts, observing: 1. That no valid reason for doubt has been presented, and that the decree of Bishop G. is firmly established by a custom of more than fifty years. 2. That Bishop G., endowed not only with ordinary, but also with Apostolic authority, issued the decree as an Apostolic Delegate, especially since the Council of Trent, Session XX, Chapter 3, grants bishops the most ample power to decide matters pertaining to choral distributions. 3. That the doubt proposed is injurious to the memory of the Bishop, who was rightly esteemed by the Chapter, and that it implies that he is either inexperienced or dishonest;

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indeed, it is injurious to all the bishops and canons who preceded him since the year 1807. 4. That since the decree of Bishop G. consists of ten articles, if it is flawed in two, it will also be flawed in the others, and that there will therefore be no end to doubts, to the great detriment of piety and peace. Therefore, he concludes that it is necessary to refrain from proposing doubts until the canons, who have been appointed to that purpose, present to the Chapter the complete draft of the new statutes for discussion and approval. The Reverend Praepositus and the Archidiaconus address each of the difficulties raised by Canon V., responding as follows: 1. That a valid and most serious reason for doubt has been presented, in opposition to the decree of Bishop G., with reference to the open law of the Council of Trent, Session XXIV, Chapter 12, against which it is lawful and proper to raise doubt as to whether a custom can be legitimately introduced. 2.

[*Latin ed. p. 87*]

And of the Concerns of the Chapter 87. "There exists no document whereby the merits of the Bishop, perhaps granted to him by the Apostolic See outside of the established order, can be judged; however, these merits cannot be discussed, as is stated in the Council of Trent, Session 21, Chapter 3, paragraph 3. Since it is human to err, the proposed doubts do not diminish the merits of the Bishop; otherwise, reverence for the elders would forbid any correction of their errors, entirely and without exception. Nor was there a lack of canonically appointed men, distinguished by doctrine and piety, who would defend the value of the decrees, or call them into question. Paragraph 4. The canonically appointed men were concerned only with those articles of the aforementioned decree concerning which a revision of the statutes was to be considered; they did not touch upon the others, since they were not pertinent to the task demanded of them by the Chapter. Nevertheless, unless the doubts are first resolved, it is not possible to proceed with the reform of the statutes, nor to draw up a schema, since it must first be known who are to be considered present and who absent in the choir, in order to determine or withhold distributions. After deliberation, the Chapter decided to request a resolution from the Apostolic See regarding the two proposed points. Regarding the revenues of the Canons, the Bishop reports the following: "The annual revenues of each canonry, not including daily distributions, and after deducting all taxes of each kind, amount to the sum of fifteen hundred livres. The daily distributions are meager, since they scarcely exceed three hundred livres annually for each canon. The revenues of the dignities and canonries of free collation constitute the common fund, of which each member receives an equal share, and therefore the revenues of each are equal." Finally, the Bishop expresses his sentiments regarding the proposed question, saying: "There are two articles of the Episcopal decree concerning which doubt is raised, namely, the ninth and the tenth.

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The former provides that dignities, canons, and chaplains shall be granted vacations from the service of the choir for two months, either continuous or interspersed, and that during this time of vacation, the absent shall not receive daily distributions, and although..."

[*Latin ed. p. 88*]

"Regarding the distributions, it is stated in the decree that the amounts are deficient: 36 florins for the Dignitaries and Canons, and 18 florins for the Chaplains. It should be noted that in the Cathedral Church of A, 11 florins are assigned daily for the regular distributions, except when extraordinary functions occur, such as processions, conventual Masses, and the like, in which cases additional florins are added beyond the aforementioned amount; furthermore, 20 florins are required to complete a distribution. Therefore, 26 distributions are made, totaling 720 florins, that is, 65 days of regular distributions, with a remainder of 4 florins. Consequently, not only two full months, but two months and five days of absence are excused for the Dignitaries and Canons, as well as for the Chaplains, who participate in the distributions in the same manner as the Canons, but not equally, but rather for half the amount. This article IX, in my judgment, contradicts common law, and especially the decree of the Council of Trent, session XXII, chapter 3, and session XXIV, chapter 12, concerning reforms, to which the Constitution of Boniface VIII, contained in title 3, section 6, concerning non-resident clergy, was referred. Furthermore, it contradicts the particular statutes of the Chapter, which, since the time of the Council of Trent and in accordance with the provisions of the Provincial Councils of Milan (since the Diocese of A was always part of the Province of Milan until the beginning of the present century), have, contrary to custom, reduced the period of absence to three months for each year, with the fruits of the benefice granted, but without the daily distributions. Finally, it contradicts the nature and reason of the daily distributions, which were instituted as an incentive and reward, so that the Canons and Chaplains would be prompt and diligent in attending to their service."

"The second article of the decree, namely article X, states that those who are absent in the morning should be considered present. This provision is entirely unique, and, as far as I know, has no precedent in other collegiate churches in these regions; and it is the care of the Canons that all those of advanced age are..."

[*Latin ed. p. 89*]

And if even the members of the choir were no longer obliged to attend the early morning prayers. Furthermore, the morning office, which, according to the decree issued at that time, was celebrated very early in the morning, is now never begun before the sixth hour in the summer, and at the seventh hour in the winter. Moreover, from the beginning of November

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until Easter, the office is recited in the winter choir, that is, in the sacristy, where the canons and chaplains are protected from the harshness of the cold, the narrowness of the place, and the care of lighting a fire. Therefore, I believe that both articles of the aforementioned decree are contrary to the law, to the particular statutes, and to the service of the choir.

Regarding the quality of the Apostolic Delegate, which Bishop G claims to possess, no document can be found in the archives of the Curia that establishes the limits and conditions of such a delegation. At that time, the Roman Pontiff was not yet deprived of his freedom, and the matters expedited by Bishop G in the aforementioned articles were not so urgent that recourse could not be had to the Apostolic See. Whether such a custom could legitimately be introduced contrary to the decrees of the Council of Trent, especially if it is subject to a nullifying clause, I leave to the Sacred Congregation to determine.

These points raised, the question under consideration is whether the form in the aforementioned writings is valid. A synopsis follows.

OBSERVATIONS FROM THE OFFICE IN FAVOR OF THE BISHOP'S DECREE:

It is not to be doubted that, by the privilege of the Supreme Pontiff, canons and beneficed persons who are exempt from choral service may, during the period of their vacancy, receive daily distributions, for the Supreme Pontiff is the moderator and arbiter of ecclesiastical discipline by the fullness of his power. Furthermore, Bishop G appears to have granted concessions as an Apostolic Delegate; therefore, it is not permissible to doubt the value and efficacy of these concessions. Furthermore, that Bishop G acted as a delegate of the Holy See is evident from the very words of the decree. And that such things can be done by delegates of the Holy See is clear because Apostolic Delegates exercise the power of the Pope. Thus, in the chapter "Concerning the office and power of a delegated judge," it is written: "For the delegate acts in our place."

[*Latin ed. p. 90*]

90. DISTRIBUTIONES. Neque est aequum, aut debet esse, ut plene ignoretur si facultates huiusmodi in aliquo casu exsistunt, et si hae facultates usque adeo sunt amplatae, cum hoc impedimento potest obviam venire illa praeclarissima regula iuris, quae praesumit factum quod de iure fieri debet. Hoc est, eo magis, quia graves et legitimae causae erant quae ad hoc statuendum impellentes, causas quas Episcopi in Decreto recensent, dicentes: "Cum iniuria temporum praebendae Cathedralis Ecclesiae pleraeque, et quidem pinguiores, nec non quotidianarum distributionum massa praediorum, et fortunarum ita depaupertata sit, ut Ecclesiae ministri eidem inserviendi, etsi ad minorem redactum numerum,

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sustentari paene nimis valeant... postulationibus vestris annuendum fore ducimus, auctoritate etiam quae fungimur Apostolica concedentes et indulgente in Domino." Nec est novum huiusmodi indulgencia elargiri, praesertim si fructus praebendarum, et distributiones, ut in themate, ita tenues sunt, ut honestae sustentationi vix sufficiant. Sane in Oriole, die 6 Decembris 1794, Capitulum, attenta paupertate redituum praebendarum et distributionum, ampliationem vacationum una cum perceptione ipsarum distributionum, postulavit ab H. S. Ordine, et votum compos factum est. Quapropter, concessionibus in themate suo robore consistere videntur. His additur quod S. Tridentina Synodus, cap. 3, sess. 21, amplissimam facultatem Episcopis tribuit, ut decernant in iis quae ad chorales distributiones pertinent. At non solum ius adsistit, sed etiam consuetudo suffragatur, scilicet, septem supra sexaginta annorum observantia, sive in lino: praesumptiva, sive in linea praescriptiva. Sane adsistit in linea praesumptiva, eo quod praesumi legitime non potest, quod Episcopi omnes, qui O successerunt, huiusmodi errorem vel non adverterint, vel ei non occurrerint, si revera eis praesto non fuissent argumenta pro huiusmodi decreto sustinendo. Quod autem in linea praescriptiva adiuvat, ex eo patet, quod consuetudo legitime introducta, novum ius constituat. Ad rem, Can. Consuetudo, dist. 2, ibi: "ea quae per consuetudinem comprobata sunt, non minus quam ea..."

[*Latin ed. p. 91*]

The laws concerning the choirs, which are written, are observed. It is certain that a custom legitimately prevails even against the canons, provided that it is not disapproved of by a few, nor by those of little note; and a lapse of ten years is sufficient to establish it, although stricter interpretations require more than forty years. Reiffenstuel, in *Decretum*, Book 1, Title 4, § 4, number 102 and following. It is easily understood that such a custom is legitimate, since it does not contradict reason or honesty, and it was introduced in good faith, and completed in due time. Finally, the Doctors state that a custom prevails whereby distributions are given to elderly clerics after the seventieth year, even though they are not engaged in divine services, as stated by Monet, in *De distributionibus*, part 2, question 12, number 57; Sanctarellus, *Variarum resolutiones*, question 8, number 14; and Barbosa, in his commentary on the Council of Trent, session 24, chapter 12, page 321, number 62, near the end. Therefore, it must be concluded that the concessions granted to the Bishop are maintained, both by law and by custom.

OBSERVATIONS AGAINST THE DECREE OF THE BISHOP.

Another point, which must be considered from a certain perspective, is found in Boniface VIII, chapter 6 of the *De Clericis non residentibus*

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(which was renewed by the Council of Trent), where, after generally stating that canons and beneficed clergy who are absent are to be deprived of distributions, it immediately adds: "Except those who are excused by infirmity, or by a just and reasonable bodily necessity, or by evident benefit to the Church." Since these reasons are not listed among the causes for vacation, it seems that, according to the Synod of Trent, session 24, chapter 12, canons are not permitted to receive daily distributions during the time of vacation; although a different interpretation may be applied to this chapter. For, whenever the Holy Order has been consulted on this matter, it has consistently declared that canons who are absent from residence, or who are excused from choral service during the time of synodal vacations, are not permitted to receive daily distributions, as stated by Benedict XIV in his instructions, number 107, number 36; nor does the consent of the chapter have any effect in this matter, since the rigor of canon law is so great that, if the chapter were to increase the portion of the absent, it would be conducive to collusion and fraud, according to the prescription of the Council of Trent in the aforementioned session 24, chapter 12.

[*Latin ed. p. 92*]

92. Concerning distributions, it is not permissible, much less should one consent to, cede, or donate, any portion of them, unless after the due proportion has been distributed to the particular canonical funds, under penalty of nullity of the donation, and of the transaction, should one occur; as is taught by Fagnanus in chapter "Licet," numbers 90 and 91, Passerin, regulations, book 8, number 127 and following, and Benedict XIV, ecclesiastical institutes, 107, section 7, number 42. It must not be overlooked that the proposed article, even if it appears to be based on long-standing custom, may not be lawful. How much more so should a custom be rejected that is contrary to the decrees of the Council of Trent, as is clearly demonstrated both by the general censure contained in the Constitution of His Holiness Pius IV, whereby such customs are either declared void if they precede, or are prohibited, so that they cannot even begin, and also by Benedict XIV, ecclesiastical institutes, 60, number 7, Cardinal De Luca, on canons and chapters, 33, number 3, in the notes on the Council of Trent, discourse number 16, Piton, ecclesiastical disputes, 23, numbers 16 and 17, and dispute number 112, number 29. The Holy Congregation, in the case of Dertkonen, in the Constitutions of the Chapter, of September 14, 1829, section IV, states very clearly: "Those who are absent from the choir during vacations do not receive distributions, but rather, the distributions are increased for those who are present," as decreed by the Trident Synod, session 24, chapter 12, on reforms. The Holy Congregation, in the matter of absences and distributions, of May 3, 1792, regarding the first question, and in Orolien, of December 6, 1794, section "Quatenus." This law is of such strength that no custom, nor even a solemnly sworn capitular constitution,

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can contradict it, as Fagnanus teaches in chapter "Licet," number 92, even if it is confirmed by the authority of the Bishop, since the Bishop cannot establish anything that is contrary to common law. And rightly so, for such customs would gradually undermine the very foundations of ecclesiastical discipline, for which the Fathers of Trent so diligently labored to restore and strengthen. Regarding the second article of the decree, the following observations are made. It is certain and well-established by common law that one does not obtain immunity from the choir, and therefore does not receive the fruits and distributions, simply by having served for forty years, as Navarrus states in constitutions, book 2, book 3, on non-residents; but while some statutes of particular churches grant this immunity,

[*Latin ed. p. 93*]

And concerning the choir, Gregory XIV, also guided by the opinion of the Most Holy Congregation, judged that the aforementioned statutes were not entirely acceptable, as stated by Garzia de Beneficiis, part 3, chapter 2, section 1, number 344. Therefore, the Most Holy Congregation generally grants this privilege to canons and beneficed priests who have diligently and laudably performed their duties for forty years. Cf. Benedict XIV, Inst. Eccl., 107, number 64. From the foregoing, it follows that the decree of the Bishop, G, concerning this matter, which declares canons or beneficed priests who have reached the age of sixty years to be exempt from the choral service, without any consideration given to their performance of that service, does not seem to be consistent with the law. Moreover, it cannot be maintained even by considering custom. For, leaving aside other considerations, it would not be reasonable for a custom to grant exemption from the choral service not because of the diligence and laudability of the service rendered to the Church, but because of the age of the canon or beneficed priest, which is something that is abhorrent to the principles of justice and equity, and which no one would deny. Furthermore, it is known that any custom that contradicts either reason or law must be set aside. To the point, the law in 2 Cod. states: "Long-standing custom is not without authority, but it is not so powerful as to overcome reason or law." Moreover, the fact that these concessions were made by a Bishop does not invalidate them, as he was acting as a delegate of the Apostolic See. However, the Bishop addressed this difficulty in the explanatory notes, stating: "No document has been found in the archives of the Curia by which the limits of such a delegation can be determined." With these and other observations in mind, the following questions are proposed:

I. "Whether the concessions contained in articles ninth and tenth of the decree issued by the Most Reverend Bishop G are legally valid in this case?" And this is to be answered in the negative.

II. "Whether said concessions, at least, are valid in virtue of a custom that has been in force since the time the decree was issued until the present

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day, in this case?"

[*Latin ed. p. 94*]

Concerning the DISTRIBUTION of alms, and the matter of the CHOIR: The Holy Congregation of Councils, having considered the matter, on the 20th of June, 1874, decided as follows: To the first and second questions, a negative answer. From which the following may be gathered:

I. Canon regulars and beneficed clergy who are absent are not to receive distributions, except those whose absence is excused by infirmity, or by a just and reasonable bodily necessity, or by evident utility to the Church.

II. Canon regulars and beneficed clergy who are absent from their residence, or who are excused from choral service during the time of conciliar vacations, are not to receive daily distributions, but rather, these should be given to those who are present.

III. This law is of such strength that no contrary custom, nor even a solemnly ratified capitular constitution, even if strengthened by episcopal authority, can be valid against it.

IV. The immunity from the choir granted to those who have completed sixty years of age, without any consideration being given to the praiseworthy choral service rendered, cannot, according to law, be maintained in any way.

[*Latin ed. p. 95*]

95. CORRESPONDENCE OF THE PARISH. August 22, 1874. Summary of the matter. The Bishop of B, at the close of the year 1871, presented to the Sacred Congregation a report, wherein he stated that, in his Diocese, those to whom the care of souls is entrusted are divided into two classes: the first class consists of those who, although called parish priests, curates, and chaplains, are endowed with parochial jurisdiction; the second class consists of those who, coming under the title of vicars and beneficiaries, are obligated to perform certain parochial duties by virtue of their own endowments, but who do not possess ordinary jurisdiction. Furthermore, he added that, in these times, the revenues of the benefices in that Diocese have been so diminished that these pastors of souls are not only deprived of the means to live honorably, but are often burdened with debts. He also reported that some of them are burdened not only with the Mass for the people, but with so many other Masses attached as offerings that the number is far greater than can be adequately served in an entire year. For these reasons, it was necessary to consider establishing a certain sum of money, which would be sufficient to support life; the Bishop considered that this sum should not be less than five hundred florins, and he requested the authority to reduce the aforementioned Masses, up to a maximum of two hundred scudi. The Supreme Pontiff, through the Sacred Congregation, ordered that a response be sent to the Bishop, granting the authority

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to reduce the Masses "for the benefit of" the pastors of souls and others named, so that they would retain one hundred and eighty Roman scudi, provided that the reduction does not exceed half the number originally stipulated in the endowment, and that this be done at the discretion and conscience of the Bishop for a period of five years, and provided that the concessions made do not exceed the five-year term. As the Vicar General of the aforementioned Diocese reported...

[*Latin ed. p. 96*]

06 PAROCHIAL ASSESSMENT: On the 24th of April of the current year, a doubt arose from this decree concerning whether, in establishing the sum of 180 *scuta* for the parochial assessment, alms offered for Mass, vestments, and other free offerings made for certain public prayers for the dead should also be included, or not. Upon receiving these inquiries, a decree was immediately issued by the Secretariat of the Holy Congregation! It is to be placed in the file, and the reason presented is under the formula of doubt written at the bottom. Synodal discussion. From the NIAI, in various versions, from official sources. It is well known and frequently declared by the Holy Office that the sum of one hundred *scuta*, established by law for the parish priest for a suitable livelihood, is not to be received by force, but only as an indication, so that the assessment itself should be entrusted to the prudent judgment of the judge, so that he establishes it in such an amount as is sufficient for the comfortable and honest support of the person, taking into account the place, the burdens, the quality of the person, the customs of the region, and similar factors. The Holy Congregation of Fermo, in its decree of March 17, 1827, §. The decree of August 27, 1853, concerning the parochial assessment, §. No one; The Rota, Part 4, Volume 1, Decision 595, No. 1, Part 6, Decision 220, No. 11, Part 19, Volume 1, Decision 1, No. 4, and elsewhere. Therefore, when a parish priest is in need of support, and no other means can be provided, it is necessary to consult about providing support, or through the perpetual union of benefices, as decreed by the Council of Trent, Session 21, Chapter 5, Session 24, Chapter 13, concerning reforms, or through the application of pious legacies, or even through the reduction of Masses, as decreed by the Holy Congregation in Spoleto on December 18, 1790, in Novaria, concerning the reduction of Masses on November 23, 1793, and in Asculana Paroeciae on December 15, 1804. However, whether account should be taken of uncertain revenues when determining the parochial assessment is a question debated among jurists, who raise this issue when discussing the appropriate amount to be assigned to perpetual vicars, according to the disposition of the Constitution of St. Pius V, which begins with the words "Ita se (Episcopum) continere et arbitra" and which states that the amount should not be greater than one hundred,

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nor less than fifty, or, if the vicar is over sixty years of age, it should be...

[*Latin ed. p. 97*]

"To the parochial fund, and to other revenues commonly received, those (perpetual vicars) should be assigned what is due to them. But what, indeed, are these uncertain revenues and common receipts? The Doctors inquire, and their opinions diverge. Some distinguish between purely contingent revenues, which certainly depend solely on the devotion of the people, and revenues that are somewhat certain, which derive from the administration of the sacraments and from funerals, and they consider the latter to be legitimately due, whereas the former are not. Thus, Cardinal De Luca, *Discipline*, 18, no. 12, concerning Parishes; Gonzalez, *Ad Reg. Cancellariae*, in the Preface, § 7, no. 185; Guiderez, *Consilia*, 8, no. 3; Valenz., *Consilium*, 54, no. 18; Pitonius, *Discipline Ecclesiae*, 46, nos. 10, 11; Reiffenstuel, *Liber III Decretorum*, title XXXVII, *De Catellis Monachorum*, no. 15, who says that this opinion is at least equally probable to that given by Reclusius concerning parochial matters, title 4, no. 10; Girateli, *Jus Pontificium*, Part II, section 23, near the end; and others. To aid in clarity, Pitonius, citing De Luca, *loc. cit.*, states: 'There is a distinction between certain revenues, some of which are purely contingent and depend solely on the devotion of the people, and it is affirmed that no account should be taken of these for the purpose of what is due; and others, which arise from the administration of sacraments or from funerals, which are somewhat certain, and of which account should be taken, since the people cannot fail to die, nor to be born, nor to be baptized,' as the same Cardinal adds. He also notes that in many parishes, these customary revenues, due to the number of people, constitute such a large income that it is sufficient even to support a college, whose benefits are considered so substantial that they are even granted as pensions. Reiffenstuel, *loc. cit.*, no. 20, adds another reason, saying: 'Although such revenues (which indeed arise from the administration of sacraments, the purification of women, etc.) are uncertain with respect to specific and determined times or quantities, they can nevertheless be reduced to some degree of certainty when calculated over three or four years.'"

[*Latin ed. p. 98*]

98. CONCERNING PAROCHIAL FEES. There are those who maintain that the parish priest ought to be morally certain that he is receiving a just compensation for his services. Others, on the contrary, contend that a just compensation should consist only of certain revenues and fixed fruits, and not of uncertain emoluments and profits. Among these uncertain emoluments and profits, they include the fruits of the stall, that is, the offerings received from the administration of Baptism, Confirmation, the Eucharist, Marriage, the Blessing of Women, funerals, etc., and they maintain that

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these should not be considered part of a just compensation. Thus, Barbosa, in *Liber 3 Iuris Eccl. univ.*, chapter 6, number 44, cites Frane. Leo, in the *Thesaurus Fori Eccl.*, page 1, chapter 31, under number 6. Van-Espen, in *Ius. Eccl. univ.*, question 2, title 35, on the portion that is due, chapter 6. Pignatelli, Volume 3, Consilia 81 and Consultation 107, number 8, at the end. Pirhing, *De praeb.*, section 1, number 44, and others. The reasons of these authors are presented systematically by Reiffenstuel in the aforementioned place, numbers 13 and 14.

The emoluments described above cannot be included in the parish priest's just compensation, firstly, because a certain and sufficient portion is due to the parish priest. Secondly, because, according to Chapter 12 of *De Praeb.*, a portion is due "from the revenues of the Church," but the fruits of the stall are not revenues of the Church, but rather the fruits of the parish priest's own office and labor.

They confirm this doctrine with weighty arguments, which contradict the opposing view, and which, above all, demonstrate that a parish priest would be almost forced to demand, seek, and directly or indirectly solicit offerings and rewards in the administration of the sacraments and other pastoral duties, especially when lacking other means of support. From this, it often happens that the parish priest is stained with the mark of avarice, injustice, or even simony, and that the people frequently murmur, show irreverence, and contempt for the sacred things, since they see them as if they were being sold or bought. There is also negligence or a slower use of the sacraments, especially the Eucharist, and, out of fear that the pastor will demand a payment for the sacraments, which is often difficult to obtain, as Van-Espen further explains in the aforementioned work, where he also cites several synods in which it was decreed that a certain and fixed portion should be assigned, so that the parishioners would not be burdened with anything when receiving the sacraments.

[*Latin ed. p. 99*]

CONCERNING the parochial tithes, the Fathers in the Council of Cologne decreed (15:3). Furthermore, in such parishes where uncertain revenues are converted into a suitable portion, duly qualified and learned pastors cannot be appointed, because they would flee the Church, where they can only maintain their livelihood through continuous solicitude, and through shameful practices and exactions, which is also noted in c. extirpandae, 30 concerning benefices, and chapter 1 thereof, paragraph 6. This opinion is also called the more common one by opposing Doctors, as Reiffenstuel I, chapter, number 13, and Pitonius, ecclesiastical disputes, 46, number 12, state. Besides the Canonists, the Rota tribunal has often issued judgments on this matter, and, with the aforementioned distinction between uncertain things that have some certainty, such as tithes of grain, wine, oil, and other products, which are uncertain only in terms of the

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total amount and quantity; and between emoluments that are entirely uncertain, such as revenues from funerals, offerings at weddings, alms for the altar, and the like; it has decreed that the former are to be included in the suitable portion, but not the latter. Thus, part 6, recent decisions, 230, number 3, part 13, decisions, 392, number 8, part 19, volume 1, decisions, 1, number 11, part 13, decisions, 347, number 8, part 19, volume 1, decisions, 1, number 9, and elsewhere very frequently. The decision 230, number 3, part 6, is particularly noteworthy, where, after quoting the words of St. Pius V, "all uncertain revenues and other customary receipts are computed," it adds, "this is to be understood of uncertain things that have some certainty, such as tithes of grain and wine, and other products, emoluments and receipts that are uncertain to the extent that one may receive from them, but this is not to be understood of entirely uncertain things, such as alms for the altar, funerals, and the like, because these are not included in the suitable portion." Rebuff. de congrua, number 8*3 and 86. Mantic. decisions, 269, number 6, Rota decisions, 5, number 3, page 2, and different from decision 449, number 6, and from decision 420, under number 2, where the reason is given, because the belly must not depend on the uncertain, since the belly does not tolerate delay! The Rota, however, only makes one exception to this rule, when it is taught that, in a particular locality, custom introduces something different. Thus, decision 1, volume 5.

[*Latin ed. p. 100*]

In *Homo Apostolicus*, book 1, part 19, number 10, it is stated: "It does not impede that parishes have more revenues consisting of numerical oblations, marriage offerings, alms, and similar things, because, since these are merely uncertain, unless it is taught otherwise by the custom of the place, they are not to be included in the *congrua*." (See *Rebuff. de congr. port.*, numbers 31 and 87; Gratian, *Disceptatio*, 399, number 10 and following; Tondonius, *Quaestiones de Beneficiis*, 58, numbers 4 and 5; and numerous decisions of the Rota). The Rota has affirmed this repeatedly, in which both concurring and dissenting opinions proceed only in uncertain matters, which have some certainty, such as tithes of grain, wine, oil, etc. This distinction and opinion of the Rota, to which Ferraris fully adheres in the word "Congrua," article 11, numbers 11 and 12, and also Scarfantonius in *Liber III*, Title III, number 60, refute the opinion of the Canonists. Although the Rota proceeds with distinction, nevertheless it declares that the emoluments of the parish are not to be included in the *congrua*, which is also maintained by the same authorities. What the Congregation of the Holy Council may have thought in this variety of judicial opinions, perhaps can be deduced from the Vicariate General, April 20, 1697, *Liber 47*, Decree, page 151 and 547, where, in the third place, in the proposed doubt, "Whether a *congrua* should be assigned to the perpetual vicar,"

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the response was, "A *congrua* should be assigned, at the discretion of the Bishop, provided that it does not exceed the sum of sixty ducats, including the fruits of the benefice and other things according to the form of the Bull of Blessed Pius V." Furthermore, for the execution of the aforementioned resolution, the Bishop issued a sentence of the following tenor: "We declare that a *congrua* of sixty ducats is to be assigned to the aforementioned perpetual vicar... including, however, in the same *congrua* the fruits of the benefice, and all other customary emoluments commonly received, even those that are uncertain." They also declare that distributions made daily, given for the sake of personal service rendered to the choir, and other functions, oblations, candles, alms, and other customary parochial emoluments, are not to be included in the aforementioned *congrua*, those given for funerals, for the blessing of corpses in their homes, and for the office of absolution.

[*Latin ed. p. 101*]

C.JNÜ«Ü\;; PAROCHIALIS 10! » concerning the flock of the Lord... for blessings, donations on the days of Easter, for betrothals, for baptisms, and similar occasions, as well as those not included in the Bull of Blessed Pius V. Due to an objection raised by the Chapter, because it was particularly burdened by the lack of a proper accounting of distributions, the matter was thus arranged: Whether the daily distributions, which are given in consideration of personal service and the benefit of the choir, as well as other parochial emoluments expressed in the sentence of the Bishop, ought to be included in the proper income. The response that emerged was: Affirmative regarding the first part, negative regarding the second. Having established these points, we approach more closely the proposed controversy, in which, according to what the Vicar General explained, two kinds of uncertain matters should be distinguished: one, those which are merely eventual and enjoy no certainty, such as *missae adventitiae*, which are not even considered among the parochial emoluments, nor are the offerings which the faithful spontaneously offer for certain prayers publicly performed in the church for the benefit of the souls of the departed; the other, those which concern the emoluments of the choir. Indeed, the common opinion of the Doctors holds that the first kind of uncertain matters cannot be included in the proper income, as Reiffenstuel I. states, number 19. Therefore, the controversy must be limited only to the second kind, according to what has been explained above, and regarding which various judgments can be made, depending on whether one embraces the doctrine of one interpreter of the law or the other. Furthermore, it was noted, when considering the reduction of Masses to be obtained, that it was left to the prudent judgment of the Most Reverend Fathers to decide whether it would be more appropriate to include the emoluments of the choir in the proper income of the parishes. Indeed, by a Rescript of the Pope, the Masses are reduced

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until the spiritual guardians of the Diocese retain the sum of one hundred and eighty Roman *monetae*; therefore, if the emoluments of the choir are deducted from this sum, it will be evident that a greater number of Masses must be remitted. Truly, he who has the sum of one hundred and eighty, with these emoluments included in the proper income, would already not need a reduction of Masses. But if these emoluments are subtracted from the proper income...

[*Latin ed. p. 102*]

102. PAROCHIAL ASSESSMENTS: If the aforementioned sum were to no longer suffice, it would be necessary to resort to a reduction. Therefore, it is reasonable to infer that the inclusion or exclusion of uncertain tithes in the calculation will determine the extent to which the number of Masses must be reduced; and since a reduction, being repugnant to justice, demands a stricter interpretation, it would seem that the uncertain tithes should be considered in the calculation of the assessment. However, on the other hand, it can be observed that the opinion which excludes these benefits from the assessment is more common and better suited to the needs of the times. Indeed, since the cost of living has become more difficult due to the scarcity of goods, the opinion that favors the parish priest should be chosen, rather than the one that is detrimental to him. Therefore, the statements made by the esteemed Reiffenstuel in *L 3 Decret, loc. cit. n. 23* regarding the assessment of the *congrua* seem applicable to the present question: "It should nevertheless be observed and considered with all diligence that, at the time when this Bull (of Pius V) was issued, namely in 1567, everything was, at least in its parts, at a very low price, so that, in comparison with the preceding times, the necessities of life were scarcely obtained at double the price; consequently, where fifty or one hundred guilders were sufficient for the honest sustenance at that time, today one hundred or two hundred are necessary, and therefore the circumstances of the times should also be taken into account, according to that common saying: 'Times change, and laws should change with them.'"

Having explained these matters, the purpose is to resolve the question of whether the *Dahlum* and other benefits should be included in the *congrua* in this case.

RESOLUTION: The Sacred Congregation of the Council, after mature deliberation, decided on August 22, 1874, to respond as follows: In the case under consideration, the aforementioned benefits should not be included in the *congrua*.

THEREFORE, IT IS UNDERSTOOD: I. For the support of the parish priest according to the provisions of the Council of Trent, the union of

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benefices, or tithes, or...

[*Latin ed. p. 103*]

I. The parish should be provided with the necessary furnishings, vestments, and collections from the parishioners, or in another more convenient manner.

II. The Holy See is accustomed to assisting parishes in need by reducing the number of Masses, when it cannot be provided for by other means established by law.

III. The appropriate sum for vicars and curates, established by law, should be understood to be approximately one hundred scudi, not as a fixed amount, but as a guideline.

IV. Therefore, when considering the appropriate sum, this should be determined by the judge, taking into account the specific circumstances of the place, the burdens of the benefice, the number of souls, the person of the rector, and also the price of provisions.

V. Alms of Masses, which are called extraordinary, are not to be included in the appropriate sum.

VI. Although daily distributions to the parish canons are to be included in the appropriate sum, as are uncertain expenses which are considered certain, in general, uncertain expenses of the vestments are not to be included, unless otherwise declared by the judgment of the judge.

[*Latin ed. p. 104*]

104 CONCERNING THE OFFERING FOR THE CONVENTUAL MASS, August 22, 1874.

By Apostolic Letters dated July 16, 1851, it was provided that the goods assigned to the Chapter of the Cathedral Church should be used to establish an endowment, from which the fruits would be distributed in proportion to the benefices held by the Canons, subject to the condition that one-third of the fruits of each benefice would be allocated to a mass, which they call the "distribution." However, since the aforementioned letters stipulated that the conventual Mass should be applied in accordance with the form of the Constitution *Benedictina*, the Canons doubted whether the offering for this Mass should be deducted from the common fund or rather from the "distribution" fund. The proponents of the first opinion were primarily guided by the reason that the conventual Mass is an obligation attached to the benefice, and not to the "distributions," while the supporters of the other opinion defended the contrary, citing various resolutions of the Sacred Congregation. Therefore, the Bishop, in order to resolve all controversy, appealed to the Holy Sacred Congregation. After considering this matter, the Secretariat of the Sacred Congregation decreed that this

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cause should be defined among the summary matters in a plenary session of the Most Reverend Fathers.

A SYNOPTIC DISCUSSION.

NOTES FROM THE OFFICIAL RECORDS.

The conventual Mass, the celebration and application of which burdens those who hold dignities, canonries, prebends, or other choral benefices in cathedral or collegiate churches, is considered a part of the divine office (cap. de I,is, dist. 2, gloss. in Clement. i, de celeb. Miss.; S. Cong. in Alb. Rid. Miss. 17).

[*Latin ed. p. 105*]

StPEK 1.1.i i .WOS'» N S HliSA. CUN\IvNTUALIS [days nil 1786 and in Reatina Missae Convent. 26 June 1850 §. nemo. Indeed, the principal part is said in Pisanen. Regarding the Application of the Missae Convent., 6 July 1737 §. 4. As the obligation attached to the provision, it was established in the Missae Convent. of Burgi S. Domnini on 16 May 1716 and in Fui gin on 24 January 1620. However, the debt is called in the celebrated Constitution of Benedict XIV, concerning the perpetual oblations of 19 August 1744. Indeed, from these principles of law, it seems to flow forth, as if from a spring, that alms should rather be taken from the theme of distribution, especially if the words of Trent are considered in chapter 3, session 21 of the Council of Trent, where it is said: "So that nothing may diminish the divine service in any way, but that due obedience be rendered to it in all things, through daily distributions." This intention of the Council of Trent was declared by the Holy Office in the aforementioned case of Burgi S. Domnini, where this was the situation. The Bishop, in the collegiate church already established since the year 1601, during the occasion of the sacred Visitation, decreed that the Missae Conventualis be applied by the Dignitaries, Canons, and the Vicar, of whom that collegiate church consisted, and that the sum of one *iulium* be paid for its celebration from the Treasury of the Chapter, from the revenues of the Chapter's endowment, after the ordinary expenses had been fulfilled. When the chapter members objected to paying alms for such a Mass, arguing that it was an obligation attached to the provision, the following question was asked: "Is it perpetually due to the Dignitaries, Canons, and Vicar, the alms of one *iulium* for each Missae Conventualis, beyond the emoluments of the provision and the Vicariate?" The Holy Congregation responded: "Affirmatively, by way of distribution." This is confirmed by the aforementioned Constitution of Benedict XIV, who, following the footsteps of the Council of Trent and the resolutions of the Holy Office, after having in §. 12 revoked the original obligation, rendered obsolete by abuse in many cathedrals and collegiate churches, of celebrating

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and applying daily the Missae Conventualis for the benefit of benefactors in general, in §. 18 has the following: "Likewise, there is an exception for others," that the Missae Conventualis is not always celebrated by the Canons and Dignitaries, but sometimes also by the Beneficiaries and Mansionaries, which seems less equitable, that pious Mass should be celebrated without any alms, from which source it could be obtained.

[*Latin ed. p. 106*]

106. Concerning the alms intended for the conventual Mass, it is overlooked. For this matter, it was likewise determined to request that it be taken "from the mass of distributions." Furthermore, the constant and perpetual practice of the Holy Congregation is that, whether before or after the praised Constitution, in almost all cases in which it was consulted regarding which mass should be offered as an alms for the application of the conventual Mass, the response was: from the mass of distributions. Thus, in *S. Severi Eleemos. Miss. Convent.*, February 1764, § 5; in *Senen. Iubil.*, January 12, 1760, § 5; and in others mentioned in *Monasterien. Vis. SS. LL.*, December 6, 1845. If, however, the mass of distributions were to be entirely lacking, it was decreed in Herbipolis, *Miss. Conv.*, June 2, 1860, among the summary prayers; in Cologne, *Vis. SS. LL.*, December 17, 1859, among the summaries; and December 12, 1868, on the page, that provision should be made for the stipend of such Masses by the prudent judgment of the Bishop. In the present matter, the decision of the Holy Office in Ferrare, March 18, 1719, seems particularly important, in which, regarding the proposed doubt no. 7, "Whether the alms for conventual Masses should be taken from the mass of distributions, or from the fruits of the endowments of the individual canons," the response was: "It should be taken from the mass of distributions." After considering these and other matters, the Holy Congregation of the Council responded on August 2, 1874: "The alms for the conventual Mass are to be taken from the mass of distributions."

THEREFORE, IT IS UNDERSTOOD THAT:

I. The conventual Mass, according to the disposition of the sacred canons, is to be offered daily in the suffrage of the benefactors in each cathedral and collegiate church.

II. Hence, the conventual Mass is rightly included under the name of divine offices, and indeed is considered the principal part of the divine office.

III. The alms for the conventual Mass are to be taken from the mass of distributions.

IV. If the mass of distributions is lacking, provision should be made for

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the stipend of such Masses by the prudent judgment of the Bishop.

[*Latin ed. p. 107*]

107. RESPONSE TO CERTAIN QUESTIONS PRESENTED BY THE HOLY SEE FROM THE COUNCIL OF TRENT.

Since certain grave questions concerning alms for Masses have been presented to the Holy See, the Most Holy Lord Pope Pius IX, by divine providence, commanded that they be examined and defended by the Most Eminent and Reverend Cardinals of the Roman Church, who are presiding over the interpretation and defense of the Council of Trent, and that they should expend their efforts in resolving them. Therefore, desiring to fulfill the task assigned to them with due diligence and mature deliberation, these same Eminent Fathers have arranged the following questions for consideration:

I. Is it fitting that the practice of certain booksellers or merchants, who, by means of public invitations and rewards, or in some other way, collect alms for Masses, and who, when they entrust the celebration of these Masses to priests, receive not money but books or other merchandise in return, be considered a shameful and therefore reprehensible practice, and should it be restrained by ecclesiastical penalties, if necessary, by the Bishops?

II. Does this practice have any value, either because the same number of Masses are entrusted to the aforementioned collectors to be celebrated, corresponding to the alms collected, or because, through it, assistance is provided to poor priests who lack alms for Masses?

III. Should the collection and disbursement of such alms be considered, as above, to be reprehensible and subject to restraint, even in the case where the alms are used for the benefit of the poor?

[*Latin ed. p. 108*]

108. To the Bishops: When is it permissible for the profit derived from the exchange of goods with alms to be used, not for private gain, but for the benefit or advancement of pious institutions and good works? IV. Do those who hand over alms collected from the faithful or from pious places for Masses to booksellers, merchants, or other collectors, whether they receive anything from them as a reward or not, engage in a disgraceful practice, and are therefore to be condemned and even restrained, as mentioned above? V. Do those who receive books or other goods from said booksellers and merchants in exchange for celebrating Masses, either at a reduced price or at full price, engage in a disgraceful practice, and are therefore to be condemned and restrained, as mentioned above? VI. Do those who receive books or other goods in lieu of a stipend for celebrating Masses, without any appearance of commerce or of unfair profit, act illicitly? VII. Is it permissible for Bishops, without special permission from the Holy See, to deduct something from the alms for Masses that the faithful usually give to larger sanctuaries, in order to provide for their decor and adornment, especially

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when these sanctuaries lack their own revenues? VIII. What should Bishops do to prevent more alms for Masses from being collected in the same sanctuaries than can be validly celebrated there within a prescribed or limited time? IX. What should Bishops do to ensure that Masses, whether offered to individual priests, or to churches and pious places by the faithful, are accurately and faithfully paid for? These questions, not having been resolved once in their own deliberations, were finally considered diligently and carefully in a General Congregation.

[*Latin ed. p. 109*]

RESPONSE 109, in the Apostolic Palace at the Vatican, on the 25th of July, 1874. The aforementioned Eminent Fathers judged it fitting to respond in the following manner: To I. Affirmative. To II. Negative. To III. Affirmative. To IV. Affirmative. To V. Affirmative. To VI. Negative. To VII. Negative, unless with the consent of the donors. To VIII and IX. [They are to be] observed according to the Apostolic Constitutions and other decrees previously issued (1). And on the 31st of August, 1874, concerning all of these matters, I, the undersigned Secretary, reported to His Most Holy Lordship; His Holiness approved and confirmed the resolutions of the Sacred Congregation with His authority, and ordered them to be transmitted to the Bishops, so that they themselves would take care to execute them within the limits of their own jurisdiction, and to observe them perpetually and inviolably. Notwithstanding anything to the contrary. Given at Rome, from the Secretariat of the Sacred Congregation of the Council, on the 9th of September, 1874. P. CARD. CATERINI, Prefect. P. ARCHIEPISCOPUS SARDIANTS, Secretary. (1) See Benedict XIV, *Institutiones Eccl.*, 56; *De Synodo Dioecesis De Sacrificio Missae*, book 3, chapter 21 and following; book 5, chapter 5 and following.

[*Latin ed. p. 110*]

FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS, DECREE CONCERNING A DISPENSATION, dated May 1, 1874. Summary of the case. By a testament, dated March 25, 1720, Joseph G., upon his death, ordered that two canonries be established in the Collegiate Church, but with the condition that the right of patronage, both active and passive, should pertain in perpetuity to three families designated by him. However, the pious founder stipulated, among other things, that someone more suitable and capable from among the designated families should be preferred; indeed, he added that if there were no individuals present in those families who were distinguished by the priestly order, then a cleric from those families who was more suitable and capable should be preferred. In the month of October, 1872, one of the aforementioned canonries became vacant due to the death of Aloysius C. Three young men descended from the families named by the testator sought to obtain

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it, but all were lacking the clerical tonsure. However, one of them declared his intention to renounce the opportunity, because he considered himself physically unfit for the benefice due to an illness he suffered from. The second, Emericus M., being found to be in the canonical age of fourteen years, and possessing both active and passive rights, presented himself and requested from the Apostolic See that his nomination be accepted, so that he might obtain formal and material possession in accordance with the Pontifical Rescript. The third, Hector G., lacking the canonical age for the aforementioned canonry, was presented for it by a larger number of patrons, with a condition.

[*Latin ed. p. 111*]

CASE OF VÍC.UÍ'S (JULY) ii.SP !VSÂTfO\OÎ - 111, examined in every way according to canon law, in which the aforementioned petitioner had, during the previous quarter, presented prayers to the Most Holy [Father] to obtain a dispensation from the defect of age. These prayers having been received by the Congregation of Sacred and Regular Canons, entrusted with such matters, a letter was sent to the Apostolic Administrator of Luca for information and opinion, after consultation with the Chapter, so that he might report on the precise age of the petitioner, and whether the right of another would be violated, and also whether he had been presented by all the patrons. Then, both the Ordinary and the Chapter expressed a favorable opinion regarding Hector's prayers, although Emericus opposed, considering the dispensation to be detrimental to his own right; hence, on May 23rd of the year 1873, a decree was issued that this case should be discussed in the plenary sessions of the Fathers. And indeed, after the proper formalities were completed, it was discussed under the formula of doubt, as appears at the bottom. [Regarding the question], a wise opinion was issued by the Consultors for the sake of truth, in which two points were affirmed: 1. namely, that the right freely and canonically to confer the present benefice has been devolved to the Ordinary. And 2. that if, for a short time, this devolution were to be conceded, the dispensation should be granted to Hector. To prove the first part of the proposition, the petitioner cited a principle which prohibits the presentation of a layman to an ecclesiastical benefice, as is taught after Chapter [reference omitted] and Chapter [reference and reference omitted] in De-Luca's Disputations, 46, n. 4, regarding the right of patrons, where it is stated: "It is certain that a layman cannot be presented to an ecclesiastical benefice." However, from the facts, it was clearly evident that both Hector and Emericus were laymen, and therefore, presentations of this kind should be considered of no value and of no importance. With these considerations, he judged the exception to this rule, which is added by the Doctors, namely that a layman can be presented by patrons, provided that he is ordained within the time limit

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prescribed by law, to be of no moment. VOTE OF THE CANONIST.

[*Latin ed. p. 112*]

H2. The Canonist alleges a fallacy. 100 n. 437, concerning controversies regarding patrons, states: "A patron cannot present a layperson before the Ordinary under the condition that he become a cleric, because in this case, the presentation, once granted, appears to be valid at the time the person presented will be capable through the assessment of the Clerical [official] before institution." This is in agreement with De Luca, *De iure pontificio*, disputation 45, n. 7, which states: "It is not prohibited for a patron to present one of a certain kind, even if a layperson, or incapable, under the condition of capability, as long as this condition is fulfilled during the time allotted for presentation, as deduced by Pirro Corrado in *De praxi beneficiarum*, book 4, chapter 6, n. 31 and 32." Furthermore, the Rota [Sacred Roman Rota] has ruled. Indeed, Emericus, although a layperson, had named and presented himself without any reservation; Hector, however, although presented by patrons with that reservation, in the best manner prescribed by canon law, although those words could contain, and should contain, the reservation "if he becomes a cleric," was nevertheless lacking the clerical tonsure in fact. Therefore, since both neglected to become clerics within four months, it was manifestly clear that their presentations had no validity, and consequently lacked legal effect, as Pitonius, loc. cit., alleges, 41, n. 27, near the end: "The principal reason upon which I based my conclusion that the presentation of Micutus was entirely null, consisted in the fact that he was a layperson who obtained the clerical state after the four months had elapsed, and thus at an unsuitable time, since for the validity of a presentation, the capability, or the clerical state of the person presented, is required to be present within the four-month term." However, a stronger argument could be made, because the very foundations of the law require that the condition of the clerical state be established, demanding that those nominated be from families of good standing and capable. Under this name, it is undoubtedly true that only those who are either marked by the priesthood or by the clerical tonsure can be understood. Therefore, when the facts of the law are in accordance with the facts of the person, and when, both during the time of nomination and within the four months, both young men were lacking the clerical tonsure, it can undoubtedly be affirmed that both presentations should be considered invalid, and therefore the four months passed were rendered useless.

[*Latin ed. p. 113*]

REGARDING dispensations: It had been devolved to the Superior the power to freely grant canonical rights. Nor could ignorance of the law in this matter be invoked as an excuse for the patrons from the penalty of deprivation in this case. Indeed, although this matter has been debated by

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the Doctors, it could certainly and undoubtedly be established that ignorance of the law cannot be alleged, and that the patrons should, therefore, be deprived of the power to choose another, as alleged by the Doctors, especially by Pitto, loc. cit., 2, n. 10, where he states: "Suppose that the patrons presented are not qualified, or are incapable according to the law of the foundation, which they are ignorant of: can they be excused from the penalty of deprivation?" The rule to be followed is negative, because ignorance of the law of the foundation cannot be alleged, and it is understood that they must know, as stated by Maranti, resp. 23, n. S and 9, p. 3; Cardinal De Luca, on the law of patrons, 47, under n. 4; Cavalier, decisions, 231, n. 3, so that those who present someone who is not suitable, or not qualified according to the law of the foundation, are deprived of the power to choose for that occasion, and even during the four-month period; this right increases for the other, or other patrons, who present even fewer candidates, or even just one, and if none are present, it devolves to the Superior. Lambertini, book 2, p. 1, question 12, article 4, n. 17 and n. 23; and the same. I would say. Cavalier, decisions, 231, n. 20. Corrad, in practice of benefices, book 4, chapter 6, n. 3. Rota in Fermo Altaris, 30, January, 1614. And even less could the exception of pending litigation be invoked to help the patrons, which could delay the four-month period. Indeed, having overlooked this juridical question concerning the matter, it was established that the litigation had been contested, and that the four-month period had already elapsed. Therefore, considering everything, it seemed that the power to freely grant canonical rights in the matter had devolved to the Ordinary. Proceeding to the second part of the thesis, the Advocate recalled that Emericus had not been presented by anyone of the patrons, but that he had nominated himself, both in the active and passive sense, in virtue of the law of patronage. Indeed, it has always been forbidden by the sacred canons to present someone who...

[*Latin ed. p. 114*]

Two canons, acting with arrogance and as if preferring pride, are constantly condemned, and are considered invalid. However, there is no difficulty in the theoretical case of Palermo, after chapter *Per nostras de iurepatr.*, which is accepted by law and by all today, where it is established that a patron can present himself through prayer; for then, whether the act is done, or the rights are observed, it would not apply to our case. It is not the case of an act, because Emericus had already named himself, and only offered prayers to the Pontiff, so that his nomination would be accepted. It is not the case of law, since it only applies in the case where there is only one patron. Regarding this matter, Pitonius, in the aforementioned passage, number 1.2.3, states: "When someone has been severely condemned for being involved in the censure of sacred canons concerning benefices, therefore, Innocent III, in chapter *Per nostras de

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iurepatr.*, established that such a prohibition should also apply to a patron with respect to the Church or benefice concerning his patronage, so that he cannot present himself to the superior, in order to obtain the institution; in which case, however, the patron could proceed without causing offense, as the canon of Palermo states in the aforementioned chapter *Per nostras*: namely, that he should pray to the Ordinary, so that he would grant him the benefice, thus seeking it through grace, not through justice; this precaution was commonly accepted in the forum, and through it, the patron avoids the censure, according to what is explained by Lambertini in *De iurepatr.*, page 50. However, Lambertini limits this opinion as being fair and reasonable, and applicable only when the patron is the only one." Furthermore, Emericus will not be able to resort to passive patronage to support his presentation; for, besides the fact that his calling did not descend directly and immediately from the founder, the right of other patrons, both active and passive, who are involved in the same matter, would exclude him from such recourse. Therefore, since the nomination of Einerlei was completely ineffective, it must be concluded that it could not have had any effect on the prayers of Hector, according to the most common principle of law, affirmed in L. 4 ff. *De re iud.*, which states: "That which is null, produces no effect."

[*Latin ed. p. 115*]

Furthermore, the speaker urged that Emeric had lost the power of presenting for that vacancy, because, contrary to the canons of jurisprudence, and to the laws of the foundation, he had presented himself in a lay state, and therefore was ineligible for the ecclesiastical benefice, as alleged by Piton, loc. cit., no. 2, par. 10. This is consistent with the Congregation of Holy Councils of Trent in the Canonicatus of St. Angel in Vado, September 22, 1855, § 3, where it is stated: "The Tralatian must fulfill and observe the laws of the foundation of the religious order in the collation of benefices, according to the warning of the Council of Trent, session 25, chapter 5, on Reform." Therefore, the nomination and presentation of one who is not qualified according to the foundation is null, and for this reason, the institution must be denied by the Ordinary, as decided by the Holy Rota, decree 527, no. 2, before Q.regor, and decree 682, no. 3, before Coccino. Indeed, in this case, the Patron who presents one who is ineligible and not qualified according to the laws of the foundation, which he cannot ignore, will lose the power of presenting for that vacancy, unless he changes his nomination within four months, which power devolves to the Superior, according to the common opinion of the Doctors, as widely discussed by Ferraris, v. Jurispatronat, art. 4, no. 8.

Moreover, it is clear that what was said about Emeric applies equally to Hector, namely, that his presentation is null, and that the Patrons who presented him have lost the right of nomination for that vacancy. If Hector

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had been nominated by the Patrons in every way required by canon law, then indeed, canon law requires not only the legitimate age, but also ecclesiastical tonsure; therefore, if the Patrons presented him with the condition, it could not be argued that their presentation was null and ineffective before the law. However, if within the legal term, no provision was made for his habilitation, it will be clear that the fault is not Hector's, and therefore, he can be presented anew, according to the teaching of Viviani, as well as the Rota before Serafín, and especially the Holy Congregation of Councils in the dispensation of Montisalti, April 8, 1843, §, where it is stated: "If the Patrons present with a condition of dispensation, which in reality is not fulfilled within four months..."

[*Latin ed. p. 116*]

Canon 6: It has been held that those to whom a right has been granted still possess that right, even if they seek a different designation, based on the principle that, when a matter is pending, time does not run. From all of this, it is permissible to conclude that Eric must be dismissed from the present judgment, since both his presentation is flawed and he is found to lack the legal right to be presented for this position. This principle is even more strongly to be maintained, because a candidate presented by a smaller number of patrons, even if he is qualified, cannot prevent a candidate presented by a larger number of patrons from becoming qualified within the legal time limit, provided that the latter meets the conditions for qualification. For, as is stated in "Fargna de iure patronato," page 2, canon 3, section 6, number 7, "A candidate presented by a smaller number of patrons, even if qualified, cannot prevent a candidate presented by a larger number of patrons, who is not qualified but meets the conditions for qualification within the legal time limit, from becoming qualified, just as he cannot prevent the larger group from presenting another qualified candidate within the same time limit, or if the same larger group were to request an extension and postpone the presentation until the end of the time limit, as De Luc, in "De iure patronato," discourse 45, number 8, demonstrates. Therefore, a candidate presented by a smaller number of patrons cannot prevent a candidate who is to be presented from acquiring the necessary qualifications during that time; nor can he prevent a candidate presented by a larger number of patrons from acquiring those qualifications within the legal time limit. The reason for this is evident, because when the Supreme Pontiff, by granting a dispensation, removes the impediment of age from a candidate presented by a larger number of patrons, he does not truly and properly cause any harm to the candidate presented by the smaller number of patrons, because harm is said to occur only when a certain and presently existing right is taken away, not when a mere potential right is involved. (Lotler, "De re beneficiorum," book 2, question 55, number 20; Card. De Luc, "De iure patronato," discourse 70,

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number 17; My teacher, in "Parergon," number 20). Only when a mere potential right is taken away is there said to be a mere potential harm, which does not deserve the name of harm, nor is it worthy of consideration. However, in the present case, Hector was presented by the larger number of patrons with the aforementioned condition, and within the legal time limit.

[*Latin ed. p. 117*]

REGARDING DISPENSATIONS: 117. The dispensation, having been declared by the Supreme Pontiff as unsuitable and incapable, must be considered as such. Therefore, Emericus's opposition should not be taken into account, even if he were capable and eligible to obtain the benefice. Furthermore, it is useless for the opponent to argue that Hector did not obtain the dispensation within the term required by the Sacred Canons, and therefore he can legitimately impede the attainment of the requested dispensation, because: 1. since he did not fulfill the condition, it should be considered as if the condition had been fulfilled in order to proceed with the principles of law, both civil and canonical, as established in L. 161 ff. concerning the rules of law, and in reg. 66. concerning the rules of law, in Q. where it is stated: "When he for whom it is intended does not proceed, so that the condition is not fulfilled, it should be considered as if it had been fulfilled"; 2. because even if he had proceeded, Emericus's opposition would still be rejected, as noted by the Sacred Congregation of the Council in the case of Imola, concerning Jurispatronatus and Institutionis, on December 20, 1822, §. And there it is stated: "He who unjustly resists the requested dispensation is to be considered as one who himself needs a dispensation in order to obtain the same benefice." However, even if Emericus were a legitimate opponent, he should not be preferred over Hector in granting the dispensation. Indeed, Emericus is supported by no patronage, while Hector is supported not only by the plurality of patrons, but also by the Ordinary himself. But it is well known that in dispensations of this nature, the support of both patrons and the Ordinary is to be considered, as noted by the Sacred Congregation in the cases of Callien and Pergulana dispensations, on July 24, 1824, §. where it is stated: "The favor of the Bishop and the patrons has always been highly regarded by this Sacred Congregation"; and in the case of the Montisalti dispensation, on April 8, 1843, §. therefore it is stated: "The Bishop's vote and the consensus of the patrons are added. It is well known that the favor of the Ordinary and the patrons has always been highly regarded by the Sacred Congregation." After these considerations, it would be useless to argue that Emericus should be preferred over Hector in granting the dispensation, since he only needs one dispensation, while Hector needs two; for it is known that the Apostolic See is accustomed to dispense from one, or even two, impediments, whenever it is lawful to do

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so, and without infringing on the rights of another.

[*Latin ed. p. 118*]

118. CANONICATUS, on the contrary, never grants a dispensation in cases of legitimate impediment, nor does it intend to grant one. The Sacred Congregation, after chapter [omitted], in its decree concerning Rescripts in Florentina, dated March 1, 1834, §. Now, there: "The Apostolic See takes care to ensure that this is observed," in matters of dispensation, "so that the right of anyone is not harmed, which must be guaranteed to all, and kept safe." However, if Hector is granted the dispensation requested, the right of no one is violated, since he enjoys the favor of the patrons, the Chapter, and the Ordinary. On the other hand, if the prayers of Emericus are accepted, the rights of both the patrons and the Ordinary are violated, to whom the right of conferring the canonry has been delegated, as well as offending the Chapter itself. From these considerations, it is permissible to conclude that the dispensation should be granted to Hector, if, for a short time, the devolution to the Ordinary has not taken place in this case.

DEFENSE OF EMERICUS. On the contrary, the patron, who defended the rights of Emericus, maintained that this man should be granted the preeminence in the matter. To demonstrate this, he cited the Tridentine decree in session 23, chapter d, on reform, where it is stated: "No one who has not received the tonsure, or who has not even been constituted in the lower orders, can hold a benefice before the age of fourteen years." Furthermore, the commonly accepted teaching of canonists is that this age is entirely required and sufficient for obtaining a canonry in a collegiate church, as Van-Espen states in *Jus Eccles., universal, part. 2, sect. 3, tit. 2, cap. 1, n. 13*: "Because the Tridentine Council does not require, with regard to canonries in collegiate churches, a special age, it is commonly accepted that only 14 years are required." This is also in agreement with De Luca, *de benef., discept. 95, n. 11*. Having these points of law in mind, the patron argued that he should be considered suitable, by the words of the foundation, which prescribe that, in the absence of priests, a cleric more capable and suitable should be chosen from among those called. Therefore, since Hector was hindered by the impediment of age, and Emericus was entirely free from this impediment, it was concluded that Emericus should be preferred, especially since he was of the same degree as his opponent, and moreover, possessed the best morals and qualities.

[*Latin ed. p. 119*]

REGARDING THE DISPENSATION: 119. It is true that if a dispensation were to be granted, even for a minor matter, it could potentially create some difficulty regarding a clerical state not actually accepted; however, it will always be the case that the dispensation should be granted to Emericus alone, while Hector would be subject to a double impediment. But it is

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the established law that the Holy See finds it much more difficult to grant a dispensation concerning double impediments than concerning simple impediments, as Sánchez de matr. clearly teaches in *S disp.* 23, n. 2, and in the same book, in *disput.* 3, n. 23. De Luca, in *de emphyth. discept.* 15, n. 6, and Menoch. in *de arhitr. Iudic.*, book 2, chapter 203, n. 13, state: "Where more impediments exist, dispensations and rescripts are usually granted with greater difficulty." Therefore, even if there were grounds for a dispensation in the present case, it should be granted to Emericus rather than to Hector.

However, the patron argued that Emericus was not subject to any impediment, since the actual acceptance of the clerical state does not pose an obstacle within four months. In truth, the Doctors unanimously affirm that the actual acceptance of the clerical state is not required within four months, but it is sufficient that, after the expiration of that time, the intention to receive it is present, especially since another, equally called, is not yet capable within that four-month period. The author attempted to support this assertion with the authority of De Luca, in *de lin. leg. resp.* 22, where it is stated, among other things: "A boy who is to be ordained must be presented to the benefice by right of patronage, because, for the purpose of this, he is considered to be already a cleric in the first sense, and, having been designated, he must soon become a cleric in the second sense and be completed through ordination." Therefore, since the testator had called more suitable and capable individuals from distinguished families, and since the clerical state in habit or in potency is sufficient, while others who are passively called are not yet capable during the four-month period, it was clear that the capable candidate should be preferred over the incapable one, and that the capability of one should not prejudice the other, as stated by Piton, in *de controvers. patron.*, allegation 65, n. 4.

Furthermore, the patron recalled that Emericus's presentation of himself did not create a difficulty in this matter, because in the present question, the right of patronage was mixed with a passive calling; therefore, nothing could prevent him from being instituted, since in such a case of patronage, a passively called individual does not require a presentation, indeed, even against the wishes of the patrons.

[*Latin ed. p. 120*]

120. The right of presentation to a canonry is rightfully claimed, as held by D.J. Laonde in *Jure Patroni*, part 2, chapter 20, paragraph 3, where he states: "In this discussion, there is no doubt about the true and accepted conclusion, namely, that where the right of presentation has a passive quality, conferred by the founder, or by another lawfully, so that certain persons, or those possessing a certain quality, must necessarily be presented, the patron cannot disregard this law and present another; and that, by doing otherwise, the act remains invalid, and that such a presentation, disre-

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garding the patron, must be considered as if made by the founder himself..." The same author holds a similar view in *Disceptationes*, 20, paragraph 7, and *Disceptationes*, 29, paragraph 2, of the same work. Therefore, it was concluded that not only was Emericus' presentation made by himself to be upheld, but also that it was effective in rejecting Hector's petition. With these and other considerations, the proposed questions were to be resolved.

I. "Whether and in what manner a dispensation should be granted in favor of Hector G., or whether the opposition of Emericus M. should be considered effective in this case?" And this question was posed with a negative presumption for both sides.

II. "Whether and in what manner is there room for devolution in favor of the Roman Curia in this case?"

RESOLUTION. After mature deliberation and discussion on May 1, 1874, the Congregation of Sacred and Regular Canons decided to respond as follows:

To I and II: The Most Eminent Ordinary Abbot should proceed according to the law of devolution, and furthermore.

THEREFORE, THE FOLLOWING ARE DEDUCED:

I. To obtain a canonry in a collegiate church, it is sufficient to have reached the age of fourteen years.

II. The presentation of a layperson to an ecclesiastical benefice is considered invalid and null by the sacred canons, unless the layperson is made eligible by the law established, either by ordinary law or by dispensation.

III. Lay patrons can present candidates to a vacant benefice.

[*Latin ed. p. 121*]

QUOAD DISPENSATIONEM: Unus est incapax de genere vocatorum, postpositum idoneum ex eodem genere, dummodo intra terminum iuris habilis reddatur, vel dispensationem obtineat. IV. Patronus potest seipsum praesentare ad beneficium per viam precum petendo, nempe ab Ordinario ut sibi ex gratia beneficium conferat; alioquin, praesentatio sui ipsius esset ipso iure nulla. V. Ignorantiam legis fundationis in patrono non admitti; proindeque, si quis contra ipsam praesentavit inhabilem, amittit pro illa vice ius praesentandi, nisi infra quadrimestre nominationem variat. VI. Quadrimestri elapso patronis laicis ad praesentandum concessum, ac non nominato idoneo, ius ad superiorem devolvi.

EXPOSITIONIS SACRAE IMAGINIS. Die 3 Iulii 1874. Ioseph et Donatus Valres S., instrumento diei 19 Aprilis anni 1708 a Minoribus Conventualibus, ius patronatus super capella D. Annae dicata sibi suisque haeredibus acquisiverunt, una cum gentilitio sepulchro ipsi capellae inherente. Porro,

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isthaec capella exsurgebat in ecclesia S. Francisci civitatis N., ad praedictos Minores Conventuales spectante. Accidit autem ut, publicata lege diei 7 Iulii 1866 a Subalpino gubernio, cuius vi oppressae religiosae familiae propria domo exulare cogebantur, praefata ecclesia Archiconfraternitati a sacratissimo Corde Iesu commissa fuerit, quae quotannis in ea capella, patronorum expensis, festivitatem S. Annae celebrare consueverat. Verumtamen, progressu temporis, psamet Archiconfraternitas ad cultum Divinae Virginis Matris augendum in eadem Compendium facti.

[*Latin ed. p. 122*]

122 The church authorities considered erecting another chapel in honor of the parish priest, and there, to expose an image of St. Anne for public veneration. However, when this news reached the patron family, they immediately appealed to the Congregation of Bishops and Regular Canons, arguing that their rights and possessions were being violated by the proposed new chapel, as it would deprive the people of their devotion to the ancient St. Anne. Therefore, they presented a detailed petition requesting that such an erection be prevented. Such requests, according to custom, were submitted to the Ordinary, so that, having heard the interested parties, he might express his opinion on the matter. Indeed, acting in accordance with custom, on January 14, 1871, he responded, stating that there was no doubt that the chapel in question was dedicated to St. Anne, which, he said, was sufficiently established both by a document dated April 19, 1708, and by the constant belief of the faithful. With this response in hand, on January 13, 1871, after carefully considering the arguments presented by both sides, the following interlocutory decree was issued by the Secretariat of the Holy Congregation: It is established that the chapel in question has the title of patronage belonging to the family of S. under the invocation of St. Anne, and therefore there is no basis for the erection of another chapel under the same title in the same church. The Archconfraternity, in February of the same year 1872, appealed against this interlocutory decree, primarily on the grounds that, after examining the decrees of the Holy Congregation of Rites, it could find nowhere that such a thing was prohibited. Therefore, on August 28 of the same year, the Secretariat of the Holy Congregation decreed that this controversy should be settled in the most solemn session of the Sacred College, and indeed, it was proposed and discussed under the formula of the question written at the end. DEFENSE OF THE ARCHCONFRATERNITY. - A vote was taken to defend the confraternity, and the Pontifical Master of Ceremonies expressed his opinion, stating that he considered that the Archconfraternity could not be denied the right to erect a new chapel. And 1.° because it was not clearly established that the chapel

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of the parish priest was dedicated to St. Anne.

[*Latin ed. p. 123*]

SACRED IMAGES: It is stated that there are twelve. However, in order to demonstrate this, it is recalled that the certainty of the dedication of an altar in honor of a particular Saint can be ascertained in three ways: firstly, from the very act of consecration, when the consecrator, in litanies, prayers, blessings, orations, and sacred unction, frequently mentions the name of the Saint to whom the altar is dedicated; secondly, from the deposition, whether of the body or of the relics, of the Saint himself, which are placed upon the altar; and thirdly, from the image, or statue, of the Saint situated above the altar. But in this case, it was manifestly evident that these elements were lacking, since neither was there a consecrated altar, nor were there any relics of St. Anne kept there, nor did the image of the Saint constitute the principal subject of the painting. Therefore, since there was insufficient evidence of the dedication of this chapel to St. Anne, there was nothing to prevent the erection of another in her honor. And even if, for a time, this were conceded, it cannot be denied that the Archiconfraternity has the right to erect another chapel in the same church and dedicate it to St. Anne, both because there is no prohibitive law to the contrary, and because examples from patriarchal and other churches in the city suggest the opposite, since there are several chapels in the same church dedicated to the B. Virgin, as well as to Our Lord Jesus Christ; indeed, there are even two chapels in the church of St. Roch dedicated to the same Saint, which have never been condemned by the Holy Congregation of Rites.

DEFENSE OF THE PATRON: On the contrary, the patron of the chapel attempted to refute the Archiconfraternity's claim: 1st, because the appellation was not made by an interlocutory decree, with dissenting parties, and was presented within the legal term; 2nd, because the negative argument derived from the fact that nowhere was it found that the Holy Congregation of Rites had prohibited this, could not invalidate the claim. And even less 3rd, did the examples cited from patriarchal and other churches in the city support the case, since in those cases, chapels were erected or dedicated to the B. Virgin under a different title; moreover, it is by laws, and not by examples, that one must judge (L.3. Cod. de sent. et interloc). Finally, it is pointed out that the erection of another chapel in the same church, and dedicated to the same Saint, should not be permitted, if...

[*Latin ed. p. 124*]

124 EXPOSITION: The confusion and rivalry caused by images, and consequently, scandals within the Christian flock. These reasons were strengthened by the authority of Pignatelli, who in volume 4, consultation 18, number 3, states: "If in any church an altar with a venerated image is found, another altar with the same image, or invocation, cannot, nor

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ought, to be erected." Therefore, having stated these things, the purpose was to resolve the doubt. Whether and how the decree of January 31, 1871, should be revoked in this case?

RESOLUTION: The Sacred Congregation of the Eastern Churches and the Religious Orders, having maturely considered and discussed the matter in its meetings on July 30, 1874, responded: "No, in all respects, and furthermore."

THEREFORE, IT IS UNDERSTOOD:

I. That it is forbidden to erect a chapel or altar in honor of any Saint, to whom another is already erected in that place.

II. However, it is not forbidden for several chapels to be erected in honor of the Blessed Virgin Mary, the Lord Jesus Christ, under different titles.

[*Latin ed. p. 125*]

125 FROM THE HOLY CONGREGATION OF THE INDEX: DECREE. Feast day, VI, July 10, 1874. The Holy Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Lord our Pope IX and the Holy Apostolic See, concerning books of pernicious doctrine, and their condemnation, prohibition, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on July 10, 1874, condemned and condemns, prohibits and forbids, or orders that the following works be referred to the Index of Prohibited Books:

* *Drei Gewissensfrangen über die Maigesetze*. In Latin: *Tria quaesita conscientiae relate ad Leges Maii*. - Mainz, 1873. Until corrected.

* *Ehrerbietige Vorstellung und Bitte an den hochwürdigsten Episcopat in Preussen: ein Wort zur Verständigung von Vincjntius Sincerus*. In Latin: *Reverens expositio et supplicatio Rmo Episcopatui Borussico. Verbum pro conciliatione a Vincentio Sincero*. - Munich, 1874.

* Ormanian M. - *Le Vatican et les Arméniens*. - Rome, 1873, Imprimerie Romaine de C. Bartoli. Decree, S. O., feria IV, March 11, 1874.

* The author of the work entitled: *Union generale dans le clergé sDidier du sacerdoce et du mariage* by Abbot Caillet. Milan, 1873. Prohibited. Decree, February 5, 1874, having commendably examined and disapproved of the work.

[*Latin ed. p. 126*]

Therefore, no one, of whatever rank or condition, shall dare to publish, or, having published, to read or retain the aforementioned works, in any place, or in any language, but rather they shall be delivered to the Ordinaries of the places, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These things, having

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been related to the Most Holy Lord Our Pius IX through me, the undersigned S.I.C., His Holiness approved the Decree and commanded it to be promulgated. In witness whereof, etc. Given in Rome, on the 11th of July, 1874. ANT. Card. DE LUCA, Prefect. Fr. Hieronymus Pius Saccheri, Order of Preachers, Secretary of the Congregation of the Holy Office. *Locus pro Sigillo*. On the 20th of July, 1874, I, the undersigned, Master of the Curia, testify that the aforementioned Decree was affixed and published in the City. PHILIPPUS OSSANI, MAG. CURS.

[*Latin ed. p. 127*]

I27. DECREE OF THE SACRED CONGREGATION OF RITES, TOLLETANA. Concerning the Beatification and Canonization of the Venerable Servant of God, Father Alphonsus de Orozco, Priest, of the Order of Hermits of Saint Augustine, Province of Spain. Regarding a Doubt: Concerning what miracles are to be considered in this case, and for what effect. Among the sons of the most holy Augustine, a new light of sanctity shines forth: the Venerable Alphonsus de Orozco, a Spaniard, who, like a lamp hitherto hidden under a bushel, is now placed upon a candlestick, that he may shine forth to all the faithful who are in the house of God. While he lived on earth, he illuminated Spain with the preaching of the Word of God, with pious writings, and with the splendor of all virtues; especially leaving examples of charity poured out upon the poor, which his most illustrious companion, Saint Thomas of Villanova, imitated. After his death, his tomb did not conceal the fame of his sanctity. Indeed, through processes instituted with the authority of the Ordinaries and the Apostolic See, his virtues were brought before the Congregation of Sacred Rites for examination. This was happily concluded, and the Supreme Pontiff Clement XII, on the nineteenth day before the Kalends of September in the year 1831, solemnly declared them heroic. Then this cause, it seems, was delayed by divine providence, so that in these our days, amidst the great turmoil in Spain, and the persecution of the Catholic Church in many places, it might be brought to a conclusion. Therefore, at the urgent request of the Promoter of the Cause, a trial was instituted concerning the miracles which were said to have been wrought by the intervention of the Venerable Alphonsus, after his death, through the power of God. The first was in the preparatory meeting in Rome, before Cardinal Constantinus Patrizi, Bishop of the Suburbicarian See of Ostia and Veliterna, Dean of the Sacred College, Prefect of the Congregation of Sacred Rites, and of the Cause.

[*Latin ed. p. 128*]

On the third of the Kalends of September of the year 1901, in the second assembly held in the Preparatory Congregation, which took place in the halls of the Vatican on the eve of the Ides of August of the year 1874; and

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in the third General Congregation, before the Most Holy Lord, our Pope Pius IX, the Supreme Pontiff, in the same Vatican halls, on the sixteenth of the Kalends of August of the present year. There, the Most Reverend Cardinal Constantinus Patrizi, Relator of the Cause, proposed the question: "Concerning which miracles does it consist, and to what effect, in this case?" Each of the Most Reverend Cardinals and Consultors presented their opinions. But the Most Holy Lord wished to open his mind, and all were exhorted to join in prayers to obtain the grace of the Holy Spirit from on high. Indeed, the Most Blessed Father was endowed with this divine virtue, and therefore, on the twenty-fifth Sunday after Pentecost, he wished to pronounce his judgment. Wherefore, after having received the sacred Mysteries beforehand in his private chapel, he entered the noble hall of the Vatican Palace and, seated on his throne, called to him the Most Reverend Cardinal Constantinus Patrizi, Prefect of the Congregation of Sacred Rites and Relator of the Cause, together with the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, and myself, the undersigned Secretary, and, in their presence, solemnly declared: "It is established that there are two miracles, which Almighty God wrought through the venerable Alphonso de Orozco, namely: the first, the instantaneous and perfect healing of Paul de Arteaga, a professed cleric of the Order of the Eremites of Saint Augustine, who was afflicted by a very severe acute arthritis; the second, the instantaneous and perfect healing of Maria Aloisia Luzi, a nun, from a lethal polypous concretion in the right side of her chest." He ordered that this decree be made public and recorded in the Acts of the Congregation of Sacred Rites. On the seventeenth of the Kalends of December of the year 1874. CONSTANTINUS, Bishop of Ostia and Velletri, CARD. PATRIZI, Prefect of the Holy Roman Church. With the seal. D. Bartolini, S. ERRATA CORRIGE P. 74 line 10: Parochi for Parochum.

[*Latin ed. p. 129*]

FROM THE CONGREGATION CONCERNED WITH THE ECONOMICS OF THE COUNCIL OF TRENT. May 9th and September 12th, 1874. Reverend Father Rochus A., of the Diocesan clergy, presented the following to this Sacred Congregation: "Since the Holy Council of Trent, in Session 24, Chapter 18, concerning Reforms, decrees that when a Church is without a pastor, the Bishop must appoint a suitable Vicar in that place, I humbly submit to Your Eminence the following questions: Whether such a Vicar possesses ordinary or delegated jurisdiction; and to the extent that he possesses delegated jurisdiction, whether he can himself delegate another priest to act in all matters, that is, in every type of case, or whether he can only delegate him to perform certain acts." This petition was received, and, along with the Bishop's information, the matter was presented under the following questions.

OFFICIAL OBSERVATIONS. A "Vicar in the divine things," who is also

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called a "Vicar in benefices," is he who, whether in the administration of the sacraments and the care of souls, or in those matters pertaining to the internal forum of conscience, performs the duties of another. One is permanent, the other is temporary. A permanent Vicar is one who, in a particular church, assigned to him from the revenues of that church, with a portion allocated to provide him with a suitable livelihood, is canonically instituted with legitimate authority, so that he cannot be removed at will, nor outside of cases expressly prescribed by law. A temporary Vicar, on the other hand, is one who is appointed only for a time, so that he lives from the revenues of the church to which he serves, as long as his service continues, but who, upon his appointment, can be removed at the will and discretion of the one who appointed him.

With these preliminary remarks concerning a temporary Vicar, it is observed that whether appointed by the parish priest or by the Bishop himself, he acquires no right or title in the benefice in which he is appointed, but he exercises all the care and other parochial functions, acting as if he were the parish priest himself.

Acts, Volume VIII, page 87.

[*Latin ed. p. 130*]

130. CONCERNING THE CURE OF TEMPORAL AFFAIRS. The jurisdiction is principally divided into ordinary and delegated. Ordinary jurisdiction is that which pertains to someone by right, either by law, canon, or custom, or by reason of their office or dignity. Delegated jurisdiction, on the other hand, is that which someone does not possess by right, but only by commission from another, in whose place they act. Thus, the law of the ancients, and the law – "And because the chapters concerning jurisdiction, and all judgments, state that he is considered to have ordinary jurisdiction, and to be able to delegate it, who possesses it by his own right, not by the benefit of another." Given this, the jurisdiction of the Vicar for Economic Affairs in this matter appears to be only ordinary. For it originates from the law or canon, by reason of office, as stated in the chapter concerning offices, and in the Council of Trent, Session 24, on reform, chapter 18. It cannot be objected that the Bishop can establish such a Vicar for Economic Affairs, and can remove him at will, and therefore his jurisdiction cannot be ordinary, which ought to be perpetual and not expire even with the death of the one granted it, as is stated in Chapter 2, concerning the office of the Vicar, in 6. This objection can be overcome with this slight observation: that by the very fact that someone is appointed as an economic vicar by the Bishop, he is granted the right to jurisdiction, and indeed immediately, as argued in Chapter 2, concerning the office of the Vicar, in 6. For the Bishop, by naming and appointing, does not grant jurisdiction. Nor does it follow from this that the Bishop cannot revoke his jurisdiction, if indeed it does not follow from this that that jurisdiction is not ordinary, but only that, just

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as he acquires jurisdiction by law or canon through the nomination of the Bishop, so too can that nomination be revoked by the Bishop, and thus, with the removal of the former, the latter is necessarily removed. For every thing, for whatever reasons it arises, is dissolved by the same reasons, as the rules of both laws teach. Chapter concerning every thing, concerning the rules of law, in 6. A similar thing happens with the General Vicar, and with judges who have ordinary jurisdiction, notwithstanding that their jurisdiction ceases the very moment they are removed from their offices by the Bishop or a superior. Furthermore, it must not be overlooked that although ordinary jurisdiction is perpetual, when it is inherent in a primary and personal right, it is not necessarily perpetual that jurisdiction which is –

[*Latin ed. p. 131*]

ECONOMICAL CARE 131, which exists only secondarily, and as an accessory to another ordinary jurisdiction, to which it is attached, just as the ordinary jurisdiction of the economic vicar is attached to the ordinary jurisdiction of the bishop who appoints him. However, greater force and weight is added to this argument from the nature of those who are substituted, from which it follows that the vicar, appointed by the bishop as an economic administrator, steps into the place of the one to whom he is substituted, with the same rights, privileges, honors, and obligations. Furthermore, since the ordinary jurisdiction of the one in whose place the vicar is substituted cannot be called into question, it seems to follow spontaneously that the economic vicar, who steps into the place of a deceased parish priest, should also enjoy the same jurisdiction. Thus, Scarfantonius argues in his canonical writings, book 3, letter 3, numbers 33, 34, and 35, and rightly so. For the economic vicar possesses the same fullness of power as the titular parish priest, so that the only difference between them is the length of time. Therefore, it is not only permissible, but highly in accordance with the law, if the economic vicar is said to possess ordinary jurisdiction.

ANOTHER, BUT RATHER, SOME OBSERVE that the jurisdiction of the economic vicar can be said to be delegated; indeed, ordinary jurisdiction is that which is given by law, or canon, and descends from the law. And because in the treatises on jurisdiction of all judgments, it is said that... But in the entire body of pontifical law, there is no canon or constitution that grants jurisdiction to the economic vicar; therefore, it would seem that his jurisdiction is not ordinary, but delegated. Even more so, because this economic vicar fulfills the role of the deceased parish priest. Furthermore, no one is ignorant that he who acts in the place of another has nothing of his own, but exercises a delegated jurisdiction, as Papinianus states in the law 1 § "He who undertakes a mandate has nothing of his own, but uses the jurisdiction of him who gave the mandate." Therefore, it should be said that the economic vicar has a delegated jurisdiction in the parish.

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However, some Doctors, taking a middle ground, argue that this vicar does not possess either ordinary or delegated jurisdiction, but rather a jurisdiction that is "quasi-ordinary."

[*Latin ed. p. 132*]

132 Regarding the power to exercise ecclesiastical functions, Pirhing, *Liber Primus*, title 28, on the office of the Vicar, chapter 23, states: "There," from which it is gathered that a temporary curate, or parish priest, possesses jurisdiction, or power, as if he were an ordinary, because he performs the duties of the parish priest, who has ordinary jurisdiction, and he is substituted for him in that same jurisdiction, office, or care, as indicated by the commonly accepted gloss in Clementine, 1, V, *Presbyter*, on the first chapter, and others apud Fajgnan, in chapter 2, on the same topic, dispensation, number 28; however, he does not have delegated jurisdiction, since he exercises not a different, but entirely the same jurisdiction as that of the one whose place and duties he performs. Lam., in chapter, number 3, *ibid.*, in 6, for although it does not pertain to him by reason of his own permanent and irrevocable office, it does pertain to him by reason of his temporary and revocable office; hence, it follows only that it is not an ordinary and irrevocable office, but rather one that is, as it were, ordinary, although in this it is similar to that which is delegated, because through a certain delegation or commission, it exists in the Vicar, according to the will of the one who entrusts it to him, who can revoke it when he pleases, as is the case with a Vicar Episcopal. Schmalzgrueber, *Paralipomena*, part IV, title 28, expresses a similar sentiment. Regarding the question of whether a temporary Vicar can substitute another, Pirhing, *Liber Primus*, title 28, on the office of the Vicar, section 1, paragraph 2, number 22, states: "There." Considering the common law, a temporary Vicar, who does not hold a title, cannot substitute another temporary Vicar, by demanding the entire care, or his own office, even for a short time, unless with the express or tacit consent of the Ordinary; and then he substitutes another Vicar not so much by his own, or proper, law and authority, but by that of the Ordinary himself, the pastor. Sancit, book 3, on Matrimony, discussion 31, number 2 and 15. Layman, *Decretum*, 5, moral theology, volume O, chapter 10, number 13, and in chapter *De Clericis*, 4, number 3, *ibid.* Although a temporary Vicar, if he cannot fulfill his office alone, is not prohibited from employing a cooperator, or coadjutor: because, as he is considered to have, as it were, ordinary jurisdiction in the university of causes, he can delegate one or the other cause, or part of the jurisdiction, but not his entire jurisdiction to himself.

[*Latin ed. p. 133*]

ECONOMICAL CONSIDERATIONS 155: The legate, as is evident from canon 1 of the Council of Trent, and from the Gloss on that canon, and also

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from the Gloss on "Iudice," canon 5, does not possess this power; and in chapter 62, "Cum Causa," it is stated that a legate is considered to have received from the Ordinary the power to substitute, or to delegate, not indeed the entire office, but a part of it, or one or two acts of the parochial office, because he himself, in a certain sense, exercises a jurisdiction similar to that of the Ordinary, and as it were, a delegated authority. See Sylvester, Questions 5; Sanchez, chapter 1; Layman, chapter 1.

However, it must be noted that, unless custom permits it (which is the case in many places), a temporary Vicar, or Vice-Curate, who is removable at the will of his superior, may, for a short time, substitute another Vicar in his place due to a just cause, such as necessary absence or infirmity, and may delegate his entire office to him; because the Bishop, when appointing a temporary Vicar, and knowing such a custom, is considered to tacitly consent to this, and to grant the power for such a substitution. See Sylvester and Sanchez, in the places cited above.

"Nor is it otherwise," as Reiffenstuel writes in his "Handbook," book 1, Decretum, title 28, on the office of the Vicar. "A temporary Vicar, although by his own right he cannot substitute another Vicar, since he does not hold the title, can nevertheless, with the license of the Ordinary, whether tacit or express, substitute another for himself, with the authority of the Ordinary, entrusting to him for a short time his entire office, or care."

Furthermore, when a temporary Vicar is not sufficient alone to perform all the parochial duties, he may take a cooperator, and delegate a part of his office to him; just as, in a similar case, a legate to the university of causes may delegate one or several causes to another, according to the Gloss on chapter "Cum Causa," canon 5, on delegation of appeals. See DD. passim, Abbas, Layman, and others, as cited above. And this also applies to a Vicar of jurisdiction, or a General Vicar of the Bishop. For neither of these can substitute another Vicar, except with the special license of the Bishop, and for a just cause, and only for a limited time; although he may delegate one or several causes to another. See the Gloss on "Iudice," canon 5; and Barb. p. 3, on the office and powers of the Bishop, number 54, paragraphs 99 and following, citing many others.

[*Latin ed. p. 134*]

134. CONCERNING THE ADMINISTRATION OF PAROCHIAL AFFAIRS. After these matters had been presented, the following questions were to be resolved. I. Does a Curate Administrator, appointed by the Bishop to administer a parish vacant due to the absence of a pastor, possess ordinary jurisdiction, or rather, delegated jurisdiction, in such a case? And, with respect to the first part, the answer is negative; with respect to the second part, the answer is affirmative. II. Can the same Curate Administrator delegate all matters, that is, the entire jurisdiction, to another priest, or only certain acts, in such a case?

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RESOLUTION. The Holy Congregation, having considered and discussed the matter in its meetings on May 9, 1874, decided to postpone a definitive answer and to re-propose the question with a new formulation: "Can a Curate Administrator, appointed by the Bishop to administer a vacant parish in accordance with the provisions of the Council of Trent, Session 24, Chapter 18, delegate another priest to perform all duties, or only certain acts?" Therefore, on September 12, 1874, this question was again considered, and the following answer was given: Affirmative, with respect to the first part, unless the will of the Ordinary (Bishop) dictates otherwise.

THEREFORE, THE FOLLOWING IS DEDUCED: I. The authority of a Curate Administrator in the administration of vacant parishes, whatever the reason for the vacancy, extends only to the Bishop, within whose diocese the vacant parish is located. II. A Curate Administrator, appointed by the Bishop in accordance with the Tridentine provision, can delegate all duties to another priest, unless the will of the Ordinary (Bishop) dictates otherwise.

[*Latin ed. p. 135*]

DISTRIBUTIONS AND REVENUES. On December 20, 1873, May 9, and September 12, 1874. The chapter of the illustrious Collegiate Church of St. Mary of the City consists of six canons and one dignity, the Archpriest, with the title of Archpriest, to whom the care of souls is attached. Among the canons and the Archpriest, who was absent from the choir for reasons of ministry, matters proceeded peacefully until the year 1870, when some controversies arose, concerning both the distributions, which are heard among the present members, and the division of revenues from tithes, and also concerning smaller emoluments. In order that these disagreements might be completely resolved and settled according to law, the current Archpriest, Anthony L., sent a humble letter to the Most Reverend Ordinary, in which he stated that "the Archpriest, besides receiving nothing from the larger revenues, which are ceded in favor of the chapter, does not receive the baptismal candle, and is also excluded from receiving distributions among the present members, and those which result from the tithes of other canons, although, in the past, the contrary custom has always prevailed." Furthermore, contrary to the disposition of the Statute of the Clergy of R., which stipulates that parish priests should, if possible, participate in such processions, and that if any of the canons assigned to the chapter participate with the College of Parish Priests, they should not lose their distributions, the chapter removes the Archpriest from receiving such distributions. Therefore, the Most Reverend Ordinary asks:

1. Whether a parish priest, occupied with his parochial duties, ought or ought not to receive distributions among the present members, especially in the Church of St. Mary, in which all revenues belong to the chapter.

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2. Since there is no general norm that defines the division of tithes, whether the canons ought to follow the custom.

[*Latin ed. p. 136*]

136 DISTRIBUTIONES » 3. Et ad modum negativum, quid iuris circa illos Canonicos » qui Missam sollemnem celebrant. » 4. An candela Baptismi, quae ab omnibus Parochis ubi» que percipitur, Oratori sit adhibenda. » 5. Quomodo intelligi debeat dispositio statuti Cleri su» perius exposita. » Hisce acceptis precibus, illico die 30 Ianuarii anni 1871, responsum fuit Eminenti s si mo Cardinali V. pro informatione et voto, ut, audito Capitulo in scriptis, referat de bono iure Oratoris et consuetudine hactenus servata, transmissis particulis Constitutionum, aliisque documentis ad rem facientibus. Mandatis H. S. C. morem gerens, Eminentissimus Cardinalis V. die 9 Ianuarii 1872 ita respondit: « Ut suum ius » Orator Parochus tueatur contra Capitulum, tam usum et » consuetudinem in eadem Ecclesia S. N. inoìitam et a Ca» nonico antiquiori, eiusdem Capituli Decano maxime testa●» tam affert, tum factum innuit, quod ipse Archipresbyterali tus et paroeciae possessionem iis stantibus iuribus nactus » sit, et quod iisdem usque ad praesens, nemine contradi» cente usus fuerit, ita quidem ut manu teneri in horum iu»» rium possessione non immerito expostulet. Postremo deni» que exempla plura congerit, tum ex Ecclesia Parochiali et » Capitulari S. Mariae in C., tum ex altera Ecclesia S. Ioan> nis F., petita, et testimonio Parochi eiusdem Ecclesiae S. Io> annis firmata, quae, iuncto cap. II. §. 7. Statuti quod Cleri » R. audit, vim faciunt quammaximam, ut adstrui possit lae> sivam omnino esse sententiam Capituli, si pro ea senten> tia a S. EE. V V. Congregatione ius diceretur. » > E contra, Capitulum dum factum Oratoris Parochi ad» mittit, tamen negat consuetudinem, quam is in medium po» suit, et in hoc mirabilis se prodit dissentio cum antiquior » Canonicus Caietanus R., totius Capituli Decanus palam af> firmet, quod alii iuniores Canonici Capituli nomine prorsus » necant. > Nollem equidem iudicium anteire, quod super iis quae» stionibus EE. VV. sapienter ferent. Verum si me consu> laut EE. V V., prospiciendum esse puto in iis iuribus dis-

[*Latin ed. p. 137*]

And moreover, [it is necessary] to regulate and define [matters] so that the office of the parish priest, which especially in these times ought to be so important, may not become so corrupted that it is often subjected to deceptions and injustices, which cause the greatest harm, and which are, above all, an impediment to the proper and complete exercise of parochial duties, which are so salutary and established by divine ordinance for the good of souls, or, at the very least, that they are not diminished and replaced by things done in a perfunctory manner, without any consideration for the sublime purpose of this office, and for the salvation of souls and the dignity of the Church itself. For, whatever may be the accounts presented by the

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parish priest, it is certain and has been proven that neither has the chapter received any uncertain income, which is said to be greater, but rather the smallest amount has been returned to the chapter. It is also certain and has been proven that the parish priest cannot, at the same time, without a freely given grace, fulfill his duties as a parish priest, whether in the spiritual care of the sick and dying, or in administering Baptism or the Sacrament of Penance to his parishioners, and at the same time be present with the other canons in the choir for the singing of psalms and sacred rites. Therefore, why should not at least a portion of the income, which is called "minora," namely, the candles which the newly baptized bring to their parish priest, be assigned to him? And I say, why should not, as is commonly practiced in almost all chapters, and especially in the chapter of Saint Mary, all distributions, and the fruits of absences, which are paid to the canons, be given to the parish priest as if he were present, or, if he is absent, provided that the reason for his absence is due to his parochial duties? Nor, in my opinion, is it sufficient that the chapter asserts in its account that the chapter statutes deny the parish priest uncertain "minora," deny distributions, and the fruits of absences, if he is absent. For, besides the fact that these statutes, even if they may seem to have been properly and duly enacted for the good of the Church at the time, cannot be considered immutable, since they must always be adapted to the circumstances of the time and the Church, and, if necessary, completely changed;

[*Latin ed. p. 138*]

158 Indeed, if the Parochial Vicars are found to be causing harm, it is not difficult to see that they have no power to compel the Parish Priest to observe the laws, and therefore, it is just that they should have the right to appeal to the Holy Order to reform what is deemed faulty or unjust in those statutes, and that all matters concerning the rights between the Chapter and the Parish Priest of St. Nicholas should be brought to the attention of both parties, and that they should be resolved in accordance with canonical justice and equity. With these considerations in mind, the following questions have been formulated for discussion. A synopsis of the discussion. I. MISUNDERSTANDINGS ARISING FROM THE OFFICE. Firstly, it has been noted that all the canonical revenues consist solely of daily distributions, as is evident from Chapter IX of the Capitular Constitutions. Furthermore, it is taught by the unanimous opinion of the Doctors, as well as by the resolutions of the Holy Office, cited by Benedict XIV, Inst. 107, n. 56, that these daily distributions are due to the Parish Priest during the time he is attending to the care of souls. Therefore, the entire question revolves around those distributions that are made to the present members, and which the Holy Office enumerates in the case entitled "Dubia indultorum" of May 6, 1820, §, where the term "distributions to the present" is better understood as referring to ordinary, occasional, and uncertain

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distributions, which are distinct from the common fund, and which are given only to those who are present, either by a special statute or custom of any Church, or by the expressed will of the benefactors. For the sake of greater clarity, it should be noted that those who are absent from the choir, even for a just cause or even by Apostolic dispensation, do not receive these distributions, as taught by Scarfi, lib. 2, tit. 10, n. 1; Fagnan, in cap. licet de praeb.; Benedict XIV, Inst. 107, n. 58 et seq.; S. C. in Basanen, Visitationis SS. Liminum, Feb. 6, 1734; and in Anagnina, servitii Chori et Distributionum, Nov. 20, 1819; Dubia indultorum, loc. cit. For these distributions, physical and not merely fictitious presence is required. Therefore,

[*Latin ed. p. 139*]

The following pertains to a matter discussed in Praenestina, concerning the Fallentiarum of July 29, 1837. In a certain case, it was noted that "Hercules..." could not become a participant... nor could he receive the benefits, which are entirely uncertain, that arise from "Missis adventitiis" [gifts from outsiders], and others that are granted by the will of the testators, or by statute, or by the custom of the Church, being paid only to those actually present... These aforementioned benefits cannot be received by those who are decorated with the canonical indulgence of jubilation, nor by those who exercise the care of souls, nor by those who are absent due to illness... nor by a choir that is legitimately absent. See the decree of the Sacred Congregation in Terracina concerning emoluments, December 23, 1826; Savona concerning distributions, December 15, 1746; Cagliari concerning burdens, September 17, 1731; and Reatina concerning jubilation, April 28, 1770. However, it is stated that there, as well, the one with the greater right proceeds regarding the emoluments of anniversaries, processions, and other similar things, which, according to the presumed will of the testators, are granted to the Chapter members who have offered prayers for the souls of the benefactors. Therefore, considering all of these things, it would seem that the parish priest, being absent from the choir due to the exercise of the care of souls, should be excluded from receiving the distributions among those present. However, on the other hand, it is noted that the parish priest, being entrusted with the care of souls, is considered to be present in the choir as if he were participating in the divine service. The Council of Trent, session 22, chapter 3, states this; therefore, he must not only be considered a participant in ordinary distributions, but also in extraordinary ones, for the benefit of the Church. See H. H. 2, letter 10, number 9, and following. There, it is stated: "And all the more so, the member of the Chapter to whom the care of souls is entrusted, will receive distributions, if, at the time, he is exercising his parochial duties..." Take, for example, the distributions, both ordinary and extraordinary, as the Decretal Trullana in Dccal., book 8, chapter 2, decree 2, number 7, absolutely states. And the Sacred Congregation declared this, as testified by Nicolai in Flor., V, distributions,

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number 13. Indeed, by right, for if the indulgence of jubilation applies to all fruits and distributions, even extraordinary ones, as the Holy Sacred Congregation declared in Burgi, S. D.

[*Latin ed. p. 140*]

April 19, 1704. Concerning the distribution of benefits, including those beyond ordinary distributions, it is asked whether a canon should be denied these benefits, as was the case in Aquapendente on September 27, 1659, and in Perugia on July 17, 1668, in Rome on January 29 and March 5, 1678. It does not appear that there is any valid reason to deny these benefits to a canon who, while attending to the care of souls, is present and participates. *Gare*, p. 3, chapter n. 334, citing the Council of Trent. Furthermore, the matter concerning the celebration of the anniversary in Bitonto on July 11, 1679, regarding canons who have reached a certain milestone, should be understood not to refer to fixed anniversaries, but to those in which the testators stipulated that only those who are present should receive the benefits, as in Novara on October 2, 1677. In that case, concerning the question – whether two canons celebrating the anniversary of Saint Gaudentius should receive the benefits, even if they were absent – the answer was affirmative. However, the matter was again brought up on January 29, 1681, and it was ruled: "In matters concerning fixed anniversaries, and in those in which the testators stipulated that only those who are present should receive the benefits, as is stated in book 32, page 44." Regarding the second question, whether a parish priest, by reason of his office being absent from the choir, can receive the benefits intended for those who are negligent, it should be noted that, according to the law, these benefits should accrue only to those who are present, who, due to the absence of others, undertake a greater burden in the choir. *S. C. in Reatina recitat*, §. contra. These benefits are, in fact, due as a reward to those who are present, and are taken away from those who are absent. *Reatina loc. cit.*, §. neque. Therefore, Barbosa, in *De Canonicis et Dignitatibus*, chapter 23, n. 18, rightly states: "But whether the distributions are due only to those who are actually present, or also to others who are considered present by law, such as those who are absent due to illness or for the benefit of the Church... it is clear from chapter one, verse: 'We decree concerning clerics who do not reside...' " Bonae, in *De Distributionibus*, question ult., point 1, n. 6, and *Gare*, *De Beneficiis*, p. 3, chapter 2, n. 465, concur. These Doctors defend this opinion, arguing that an absent person, due to a legitimate cause, is considered present in the choir and therefore entitled to his distributions.

[*Latin ed. p. 141*]

It is proven! WM [This likely refers to a specific citation or reference, the meaning of "WM" is unclear without further context.] from the Council of Trent, Session 24, Chapter 12, and not from negligently omitted portions,

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because it is fitting that these should accrue to those who, in the absence of others, bear a greater burden. Therefore, when a Parish Priest is absent from the choir for the sake of the duties of his office, he is considered to be present only in a legal sense, and it does not seem that he can benefit from the omissions of the negligent. However, on the contrary, it is known that these benefits are granted to those present in the choir in a legal sense. Indeed, they are given to those who enjoy a canonical dispensation due to infirmity, as in Romana on May 5, 1703, in II. A question was proposed: "Whether a canon [absent from the choir and other divine offices by reason of a dispensation due to infirmity] is entitled to his due share of those distributions and common funds which accrue to canons absent from the choir or on leave." The answer given from that date was affirmative, from the date of the granting of the dispensation. Furthermore, it was confirmed in Aquipendii on March 2, 1697, in III. Dub. Aquipendii, April 1, 1619, in Dub. 1. Reatina, April 19, 1792, provided that it does not contradict particular constitutions and the custom of the Church. Therefore, Scarfantonio, speaking of canons absent from public psalmody for a reasonable cause, and having doubts as to whether these canons are entitled to the distributions which other canons, absent from the choir without a reasonable cause, lose at that time, declares that he holds the affirmative opinion against Bonacina and others - there - "If it is true that," as Barbosa reports in Collectanea V. C< n< nici, namely the Sacred Congregation of the Council, under the date of November 20, 1600, clarified that canons who, due to a legitimate impediment, are not present in the choir, not only retain their own distributions, but are also considered present with regard to acquiring that portion which has been lost by others absent from the choir without just cause. And this opinion is also considered probable by Castr. Pal. tom. 2, and Tullen, in Dec. cap. 8, n. 7. And Benedict XIV, Inst. 107, refers to a decree of the Holy Congregation, under the date of April 15, 1511, related in L. XI. Decr. p. 98, which held that those absent from the service of the choir due to infirmity, or another cause, should not only receive their daily distributions, but...

[*Latin ed. p. 142*]

142. The distribution [of funds] proceeds just as if they were present at fixed hours, but also the increase in distributions, which those who were absent from the divine services lose, must be considered. Having considered all these things, the absences of the parishioners from the services of the parish priest L. would seem to be a fault, since his absence from the choir, due to the exercise of the care of souls, could not be called into question for a legitimate reason. Nor do the capitular constitutions seem to contradict this opinion, provided that such distributions are granted even to the infirm. Regarding the third question, in which it was asked whether, at least, in virtue of the custom of the Church, the archpriest, having been absent three times for the purpose of the aforementioned office, could receive the

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aforementioned emoluments, it was noted that such a custom could not be proven, due to the irregularities found in the register of absences, and that if, at a given time, it were to be admitted, it would be of no effect, according to the Tridentine decree cited above. Indeed, in this matter, the Holy Synod recalls that any statutes and customs that are contrary to the decree of Boniface VIII are invalid. Therefore, it seems clear that a custom is not sufficient to receive such emoluments, which are given only to those who are actually present. Regarding this matter, Fagnanus, in book 3, Decretum, on Prebends, chapter "licet," number 71, states that such a custom is not valid, whether it was introduced before or after the Constitution of Boniface VIII, and the Sacred Congregation has often responded that even an unmemorable custom has been abolished. On the other hand, it must be noted that, given the irregularities existing in the register of absences, the custom does not seem to be absent, but rather, it cannot be proven from it. However, the custom of receiving such emoluments from the parish priest is attested by the Dean, who is older, and certainly the assertion of this Dean must be given more weight than that of all the canons, who were all created recently. Furthermore, Pirhing, title 22, Reiffenst., book 2, title 26, number 140, and the Sacred Congregation in January, July 31, 1819, §, teach that the customs of places have the force of law. Indeed, these customs are so strong that, being endowed with necessary qualities, they abolish the law itself, as stated in the last chapter on customs, by Benedict XIV, on Diocesan Synods.

[*Latin ed. p. 143*]

KI /'ii , V i , N " HJÜÄ \kò lib. 12, cap. 8, n. 8. ibi: Nothing is more established than that any human law, even a canonical one, can be abrogated by a custom that is reasonable and legitimately prescribed. However, as stated above in this case, the custom appears to be in accordance with the law, and therefore, as it gains strength, no one can deny it. Regarding the second doubt, concerning the ability to be absent from the choir during the divine offices in order to celebrate Mass, Passerini notes that it cannot be introduced, either by a specific decree, or by the legitimate permission of a Superior, or by custom, so as to benefit those who have left the choir to celebrate Mass, resulting in the loss of daily distributions. And this opinion is based on the ancient discipline of the Church, according to which, during the divine offices, no one was permitted to be absent from the choir, either to administer the Sacrament of the Eucharist, or to celebrate Mass. This principle is even more strongly to be maintained with regard to emoluments derived from distributions, whether among the present or those who are negligent. However, in the year 1753, a doubt on this matter was proposed to the Most Holy Congregation, and a response was issued, also with the opinion of the Holy Congregation, that it is by no means permissible to be absent from the choir, except when so ordered by superiors, although

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they were reminded to abstain from giving such orders, lib. Decret XIII, p. 51. And St. Charles Borromeo, in the fourth Mejolansen Council, p. 2, cap. 13, strengthened this resolution, stating that those who, in order to celebrate Mass, do not attend the divine offices, will lose the distributions, unless it is the absence of priests who offer the sacrifice of the Church; 'necessity sometimes requires that the Prefect order a canon to leave the choir, or that some other concession has been granted by the Apostolic See.' Therefore, two conditions are required for a canon to be able to leave the choir to celebrate Mass: namely, the order of the Prefect, and the necessity of the celebration. And the Holy Congregation has not departed from this rule, as seen in the documents of St. Miniatis, February 8, 1817, and Anagnina, November 20, 1819, in which the causes of that utility or necessity are indicated, which in each case must support the Prefect of the choir in granting permission to celebrate. The Holy Fathers, in the aforementioned document of St. Miniatis, regarding the doubt: "Whether and how..."

[*Latin ed. p. 144*]

I. ON DISTRIBUTION; nor can those who are absent from the celebration of Mass during choral office perform daily distributions; they must respond negatively unless with the permission of the prefect, adding to the benefit of the people. Therefore, when these two circumstances are verified, it is undoubtedly clear that there is a just and legitimate reason for absence from the choir. Indeed, in this case, the canons of S. N. celebrate Mass for the benefit of the people, at hours established by the sacristan, without receiving any compensation for the inconvenience, and this is done according to custom, and because of the lack of chapels and revenues; hence, this circumstance is verified in this case. But from the above-mentioned responses of H. S. O., it is also clear that the canons, being absent for a just reason, with the aforementioned conditions observed regarding anniversaries and other occasions, must also contribute to the distributions among the present, and to the proceeds from the offerings of the absent. Therefore, both the distributions among the present and the offerings of the absent belong to the canons of S. N. Regarding the fourth question noted, all offerings are to be included among the parochial revenues after chapter 10. Because the Sacred Congregation of Holy Orders, in *sanctorum*, 10, question 1, held that the Rota recent, page 18, decree book 400, number 21, Scarfant, book 3, number 60, Rebuff, *de Congrua*, number 44, Barbos, *de Parochis*, chapter 2, number 174, held that the candle offered to the parish priest on the occasion of Baptism is an offering, and therefore belongs to the parish priest. Nor does anything contradict this (custom), which is considered an abuse and corruption in law. Thus, all customs are to be observed against parochial rights, as decreed by Pius IV in the Constitution *In Principis Apostolorum*, and confirmed by H. S. C. in *Nullius Sublacen*, *Iurium Parochialium*, September 18, 1824.

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Indeed, even against the forty-day or hundred-day period, the same rights are to be observed, as stated in *Baren*, *Iurium Parochialium*, August 28, 1856. Bovino, *Iur. parodi*, June 27, 1820. Pisa, *Emolumentorum funeris*, December 14, 1872. §. From these. Nor are capitular constitutions to be opposed, which, as those without Apostolic sanction, are considered to be of no value in destroying parochial rights, as stated in the Rota recent, page 4, volume 2, *Deo*, 473, reverse, 36.

[*Latin ed. p. 145*]

And it seems much less likely that these constitutions, confirmed by the authority of Cardinal V., could aid the Canons. For it is known that, in matters contrary to common law, the Ordinary's power is contained within certain limits. In Firmana, the Distribution to the Choir was served on September 13, 1872, §. Neither. On the contrary, it should be noted from the capitular constitutions that the revenues arising from baptisms entirely belong to the Sacristy, and that the statutes of any Church have the force of law and obligate each member of the Chapter to observe them, just as common law does. *Pignatei, Ius, vol. 4, Consult. 76, no. 6. S. C. in Faventina, concerning the removal of a Chaplain, January 30, 1873, §. Commentary.* It should not be considered that the constitutions of the Chapter lacked Apostolic sanction, for it cannot be doubted that they were confirmed by the Cardinal titular of that Church. Therefore, it is presumed that he had the power to do so from the most ancient rule of law: "It is presumed that what was done was what was legally required to be done, especially since he had obtained other powers from the Most Holy [Father] both verbally and in writing." In addition to this, the Chapter is burdened with the expense of paying for things that would otherwise belong to the Parish Priest in his parochial duties, such as the cost of preparing the viaticum, etc., as well as the monthly sum of 13 pounds, 4 shillings, and 43 pence, in favor of the Vice-Parish Priest. Therefore, since the burden is apparent, the benefit must also be apparent. Reg. 55. concerning the rules of law. Furthermore, it is noted that the constitutions were marked and confirmed by oath. An oath made to a community concerning a just and lawful matter always obligates, and cannot be changed at the will of the one who made the oath, no matter how much better it may seem. Common argument, chapter 28, concerning oaths, and chapter 2, concerning agreements, where, as a received rule of canon law, it is stated that "a sacrament conferred upon a person must necessarily be observed, whenever it can be observed without sin, or without detriment to eternal salvation, and without prejudice to another." Ferraris, *De Iuramento*, article 3, no. 18. S. C. in Hieracen, concerning fruits and distributions, August 24, 1872, §. However, (1). (1) Among the documents presented to the Most Reverend Fathers, the Acts, volume VIII, pages L XXXVII, were presented by the procurator of the Chapter. The Bull of the erection of the Archpriestship of the principal

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curacy in the Collegiate Church of St. Nilus.

[*Latin ed. p. 146*]

The provided text does not contain any quotations from Daniel 5:30. Therefore, no changes are required.

146 Finally, concerning the last doubt, the following points should be considered. The Statute entitled "Concerning the Clergy," in chapter II, on the offices, rights, and duties of the Chamberlain, stipulates that in general processions, such as "the Most Holy Body of Christ," Rogation days, Jubilees, the vacant Apostolic See, and similar occasions, the parish priest, insofar as it is possible, should be present; and if any of those assigned to a particular chapter should be absent with the College of Parish Priests, they will not lose their distributions. § 7, loc. cit. Given this, it would seem that the parish priest L., participating with the College of Parish Priests, can enjoy the distributions that parish priests receive as such, but not the distributions pertaining to the canons. Firstly, because the aforementioned statute, when speaking of the Chamberlain of the Clergy, specifically assigns these distributions to him, saying in § 3, loc. cit., "In this office, he receives distributions just as if he had been present with the chapter to which he is assigned, which is certainly a different way of speaking than that used by the same statute when speaking of parish priests." Therefore, a different interpretation of the meaning must be given. Secondly, it is contrary to sacred canons that someone who is bound to another office for the service of the same Church from which he receives his stipend, should be considered as present in the choir, and be able to receive distributions. Indeed, a request was made in St. Severin on November 15, 1657, concerning whether a canon should be marked absent because of his absence from the choir, or rather, whether his participation in the organ for the service of the Church should be considered sufficient. This was addressed in a decree issued by Benedict XIV, which began with these words among others: "Whereas," the aforementioned Vicariate, which the beloved A... C... of the aforementioned Collegiate Church holds perpetually, as is asserted, and to whom, perhaps, the fruits, revenues, and income of the twenty-four [acres] and one [acre], as well as two hundred [denarii] of uncertain income from the Chamber, according to a current estimation, amount to an annual value of, as it is also asserted, not exceeding, at present, and conversely, if the aforementioned A... person should, in any way, become vacant, it should be permanently suppressed and extinguished, and the fruits, revenues, and income certain and uncertain, greater than those of the Baptismal font and half of the rights and revenues pertaining to the aforementioned Vicariate, which now pertains to the burial of corpses, and to the Chapter Table of the aforementioned Collegiate Church, both now and from now on, and conversely, and if the suppression and extinction of this kind have been

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effected, they should also be permanently applied and appropriated...

[*Latin ed. p. 147*]

Concerning the effect of receiving distributions: The Sacred Roman Council responded: It rejoices if a stipend for music is not received. To this, the adjacent document of July 11, 1671, agrees. However, the Parish Priest L., participating in the aforementioned processions with the college of Parish Priests, cannot be considered to be receiving distributions as a Parish Priest, and therefore, it would seem that he cannot enjoy the distributions which belong to the canons. Nevertheless, in order that he may not be judged contrary to the principles of law, those words in the statute are entirely superfluous, and it must be said that the distributions are given to the Parish Priest L. along with the college of Parish Priests. For what meaning would those words have, if not of a participation in the canonical distributions? Interpretation of the law is necessary whenever the word is doubtful, L., and therefore, 11 ff. of the law, but not when the words are entirely clear by themselves. Nor is it new in law, that one act may represent two persons. The recent Rota, page 5, volume 2, decision 79, number 12, also states this, even to the effect of receiving two distributions. The same Sacred Rota, volume 1, page 5, decision 150, number 25, "there," states that when a canon and a lector perform a double function, it is not inconvenient that he receive a double emolument. Therefore, having considered both of these things, the proposed questions can be resolved.

I. Whether the Parish Priest of S. Nicolai, being absent from the choir due to the exercise of the care of souls, can enjoy the distributions among those present in this case.

II. Whether to the same Parish Priest, absent as above, the faults of the absent canons are due by law in this case. And the answer is negative.

III. Whether the same emoluments are at least due to him by custom in this case.

IV. Whether the canons celebrating Mass in the insignificant Basilica of S. Nicolai at the hours established by the Sacristan, without an increase in alms, can receive the aforementioned emoluments in this case.

V. Whether the candle offered on the occasion of a baptism belongs to the Parish Priest, or to the Chapter in this case.

VI. Whether the Parish Priest, walking with the college of Parish Priests in Karlova...

[*Latin ed. p. 148*]

14. REGARDING DISTRIBUTIONS!* In addition to the distributions made by the parishes, the Chapter also enjoys distributions during general celebrations. RESOLUTION. The Holy Congregation, at the request of the Chapter, issued a resolution in its meetings on December 20, 1873, through the document *Dilata*. After mature deliberation, it considered

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it appropriate to respond again to *Dilata* on May 9, 1874, and finally, on September 12, 1874, it issued a response. To I. Affirmative, unless the will of the testator or donor dictates otherwise. To II. Affirmative. To III. Provision is made in the preceding section. To IV. Affirmative, with regard to emoluments, as in the first question. To V. Affirmative, in favor of the Chapter, according to the form of the Bull *Inter multiplices* of Benedict XIV. To VI. Affirmative, according to the form of the statute of the clergy. THEREFORE, IT IS UNDERSTOOD: 1. Distributions made during celebrations are distinct from daily distributions and those offered regularly, so that they are usually given only to those present, either by a special statute, or by the custom of any Church, or by the express will of the benefactors. 2. Absent members, even if excused by a just cause or by an Apostolic dispensation, do not receive these occasional and uncertain distributions, unless it is expressly stipulated otherwise. 3. However, they do participate in the common right, as if they were present in the choir, unless the will of the testator or donor dictates otherwise, concerning canon regulars granted an indulgence for jubilation, canon regulars actively exercising pastoral care attached to their prebend, and canon regulars celebrating Mass at the appointed time with the permission of the Prefect of the choir and for the benefit of the people. 4. According to the disposition of the law, only those who are present benefit from the increase, those who, due to the absence of others, undertake a greater burden in the choir. 5. However, for these benefits, physical presence is not required, but a fictitious presence is sufficient; therefore, those absent due to a legitimate and canonical impediment, beyond the benefits of their prebend,

[*Latin ed. p. 149*]

AND concerning the 149 daily distributions, and the failings of the negligent [individuals], [he] profits. 6. Those canons celebrating Mass are to be considered absent at the appointed time, and are to lose their daily distributions, unless the needs of the people require it, and unless permission is granted by the Prefect of the choir. JURISDICTION PAROCHIAL. December 12, 1874. Summary of the case. In the boundary between two parishes, within the city of B., there stands a house, to which formerly there were two entrances: one under number 102, which was the main entrance, opening onto the street commonly called S. Felice, which lies within the limits of the parish of S. Maria a Charitate; the other, under number 194, which was a secondary entrance, giving access to the building for those entering from the street known among the people as Lamme, and over which the parish priest of S. Gregorii exercises jurisdiction. Furthermore, it happened that, after a year, the main entrance was converted into a tavern, commonly called a "Ristorante," and was separated from the rest of the house by a wall, so that what was formerly the secondary entrance is now not only the

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main entrance, but the only one. With these changes, the parish priest of S. Maria a Charitate considered that no new rights had been created, and that his jurisdiction over the same house remained as before. But the parish priest of S. Gregorii strongly opposed this, and a dispute arose, which was brought before the Ordinary judge, who, after hearing the Consultative Congregation, issued a decree in favor of the parish priest of S. Gregorii. However, this was opposed by the parish priest of S. Maria a Charitate, who was provoked to appeal to the Holy Office. And the appeal was filed on April 25th of the following year, and a response was received on May 6th: "To the Most Reverend Archbishop, for information and for his vote, after hearing those with an interest, a copy of the decree, concerning which in the prayers, was sent." 1.

[*Latin ed. p. 150*]

50. OF PAROCHIAL JURISDICTION. The Reverend Archbishop, diligently fulfilling the mandates of the Holy Order, has provided information. In his communication, he recounts what has been previously explained, and adds further details to confirm the aforementioned decree. Upon receiving the Archbishop's information, the controversy was brought before this Sacred Congregation for judgment, the matter being presented under the following question.

DISCUSSION: THE PAROCHIAL RIGHTS OF SAINT GREGORY. The writers of canon law unanimously teach that he who resides on the boundary between two parishes is subject to the jurisdiction of that parish to which his house has access. It is sufficient for all to present the authority of one or the other. Indeed, Aloysius Ricci, in *Praxis*, resolution 510, number 1, writes: "He who resides on the boundary between two parishes is a member of that parish to which his house has access, because access is the determining factor for the house." Nor is this dissimilar to what Barbosa states under the title *de officio et potestate Episcopi*, page 2, paragraph 32, number 71: "It is inferred that a person residing on the boundary between two parochial churches is considered a member of that parish to which his house has access, according to the notable teaching of Bartolus in book 6, at the end, in the sections concerning damage; the reason for this inference is that access is the determining factor for the house, to which the law yields, as stated in the sections *de Legibus*, 3. Bald. Cons. 50, volume 1."

However, in the present case, the house in question has its entrance, or its sole access, on the territory of the parish of Saint Gregory, that is, on Lamme Street, as the Most Reverend Archbishop points out, and that, after the aforementioned changes, the access from Lamme Street is not only the principal access, but the *sole* access to that house. Therefore, how can it be denied that this very house, and its inhabitants, are subject to the jurisdiction of that parish priest, in whose parish the aforementioned street is located?

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From this, the Most Reverend Archbishop rightly concludes: "Therefore, if, by reason of the principal access, this house was, until recently, subject to the parish of Saint Mary of Charity, all the more reason now exists for it to be subject to the parish priest of Saint Gregory, who has jurisdiction over Lamme Street."

[*Latin ed. p. 151*]

OF PAROCHIAL JURISPRUDENCE 151. Although the adversary may contend that access to the church from the street of St. Felix still exists, the Most Reverend Archbishop refutes this falsehood, stating that the former entrance was indeed blocked by a wall. Nevertheless, even granting the truth of his words, the adversary achieves nothing. For it must be admitted that, although there still remains an entrance from the street of St. Felix, this has become secondary, since it leads into a public hall, and neither horses nor chariots can pass through it. But the entrance from the street of Lamme is not only suitable, but fitting for a splendid house, so that even noble carriages can enter through it. Therefore, no one will deny that the main entrance is from the street of Lamme, and that it is more, or rather, exclusively used. Furthermore, it is certain that, even if we were to concede that the house in question has two entrances, it will belong to the parish of St. Gregory, provided that the street of Lamme is within the boundaries of that parish, and that the main entrance, and the more frequented entrance, are located therein. Indeed, the Reverend Fathers unanimously teach that a house which has two entrances in different parishes belongs to the parish in which the main entrance and the more frequented entrance are located. Barbosa, *de officio et potestate Episcopi*, allegation 32, number 71. Reiffenstuel, *ad titulum de Parochiis*, number 20. In the case where a house has two entrances, it belongs to the parish where the main entrance and the more frequented entrance are located. And the eminent Giraldi, in the additions to *Institutiones Canonicae*, Maschat, *in Summa Decrirent*, book 3, title 28, on burials, chapter "with whom," states: "If someone lives in a house having one entrance within one parish, and another entrance within another parish, then the canonical portion is due to the parish within which is the principal entrance." And Pignatelli, *consultorum canonici*, volume 8, consultation 5, number 7: "If a house has two entrances in two parishes, it is judged to belong to the parish in which is the main entrance and the more frequented or customary entrance." And in such unanimous agreement of the Reverend Fathers, there were no doubts as to the solution. Thus (as...)

[*Latin ed. p. 152*]

152 Regarding PAROCHIAL JURISDICTION, as Giraldi recounts (loc. cit.), it was decided by Alexander Sperelli, on September 7, 1694, then Vicar General, in favor of St. Mary of the Martyrs in the City, against the Chapter of St. Eusachius, with respect to the illustrious family of the Marquis Vir-

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ginius Crescenzi, whose palace has its main entrance within the parish of St. Mary. Furthermore, Ursaya, in *Disputationes Ecclesiasticæ*, volume 3, part 2, disputation 11, number 102, recounts that a similar judgment was rendered on the occasion of the death of Emi Taja: For, as the author states, since that person's palace was located near the church of St. Mary of Peace, and had two doors corresponding to two parishes, each parish priest claimed that the deceased belonged to his own parish; and it was decided that it belonged to the parish of St. Mary of Peace, because the more noble and frequented door corresponded to that parish. Moreover, according to this most wise rule, the Sacred Congregation of Bishops and Regulars in Velletri clearly demonstrated that such controversies should be judged in this manner, as this was the nature of the Association and Emoluments of Funerals. Joseph Graziosi had two residences in Rome, one in Rome and one in Velletri, in the latter city he had a house within the boundaries of two parishes, namely St. Mary and St. Michael the Archangel. When Joseph died in Velletri, and it was uncertain to which parish the funeral expenses should be assigned, the Fathers in the general congregation, on May 6, 1870, resolved the dispute in this way: "That the funeral expenses should be divided between the aforementioned parish priest of the City and another parish priest from the parishes of Velletri, in whose territory the main entrance to the family's house is located. Nor should the objections raised to the contrary prevail, namely: first, that the entire parish of St. Gregory is not subject to the road of Lamme, but only in part, while the other part is enclosed within the boundaries of the parish of St. Mary of Charity; and secondly, that jurisdiction over this house has not been established because it is alleged that access to the disputed building from the road of Lamme has been claimed in favor of the parish of St. Mary through long-standing prescription. Indeed, the first point is clearly false, as it is evident that the boundaries of each parish have been defined and established, so that the territory of the parish of St. Gregory has been..."

[*Latin ed. p. 153*]

OF PAROCHIAL JURISDICTION 15? The road runs from the Lamme road to the Saint Felix road, up to the Lamme bridge. Since there is no distinction made between the left and right sides of the road, but rather the term simply refers to the road itself, it is clear that the aforementioned distinction cannot apply, and therefore, the well-known principle of law applies: "Where the law does not distinguish, neither should we." Thus, the first difficulty faced by the Parish of Saint Mary is resolved. However, this prescription does not detract from this right, provided that it is considered by the law. Indeed, on this matter, the law is clearly stated in c. Super, 4, h. t.: "When it was doubted whether what is prescribed regarding the boundaries of provinces and dioceses, and those that adjoin them, concerning not being prescribed by the Holy Canons, is permissible (c. Quicumque 4 and

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3 seq. caus. 16. q. 3), it is also permissible in the boundaries of parishes." To this, Urban III responds that it should be understood that both are to be considered, provided that the ecclesiastical boundaries have been established by legitimate (as is the case here) or other unquestionable authority." This is confirmed by Pirhing, who developed this theory in book 3, title 29, § 2. Therefore, since the boundaries in question were established by ecclesiastical authority, it is clear that the prescription of jurisdiction could not apply, and even more so because the opposing party has never exercised any rights of jurisdiction through the Lamme road. Therefore, since the decree of the Archdiocesan Curia is based on well-known principles of law, it flows like a river into a prepared bed, and cannot be argued to be either null or unjust, and therefore must be fully confirmed.

THE RIGHTS OF THE PARISH OF SAINT MARY AGAINST THE CHARITY. - However, all of this is strongly opposed by the Advocate of the Parish of Saint Mary, who, having previously stated that access to the Saint Felix road was not entirely prohibited, divides his argument into three parts. He demonstrates in the first part that the Decree of the Archdiocesan Curia is not valid by law; in the second part, he argues that the aforementioned Decree is unjust and contrary to the rights of his client; and in the third part, he shows that the reasons that motivated the Archdiocesan Curia to issue the Decree are not at all applicable to the matter at hand. First, addressing the first point, he says that the Decree is not valid by law because it contradicts a well-known principle of law.

[*Latin ed. p. 154*]

154. The boundaries of parishes are established, and it is determined that they can only be changed by the competent ecclesiastical authority. Council of Trent, Session 21, chapters 4 and 5, concerning reform. Indeed, even the Bishop himself cannot always do this, but only in cases permitted by law, as testified by Bouix, *Tractatus de Parochiis*, part 2, chapter 4, proposition 1. This is so true that even civil authorities, in those kingdoms where parishes constitute the political division of the state, can make no change, nor can they do so without the consent of the Roman Pontiff. With these premises, the Orator argues that the Archbishop's Court has decreed that the disputed house has been transferred from one parish to another, not with the consent of the competent authority, but by a simple and bare act of a layperson, a private individual, who had converted the main entrance of the house into a doorway leading to a dining room. And therefore, he approves of the erroneous principle that a layperson can regulate the boundaries of parishes. Furthermore, he argues that the decree itself is invalid by law, because it was issued contrary to a principle of law, as stated by Reiffenstuel, *Liber 2 Decretorum*, title 27, § 3, number 70; Lotter, *De Re Beneficiis*, book 1, in the appendix; and others. 2. The same Orator also argues that the decree is not valid by law, because it

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contradicts another well-known rule of law, namely that the boundaries of parishes must be certain, determined, perpetual, and immutable. Council of Trent, Session 24, chapter 13, concerning reform. Moreover, the decree of the Archbishop's Court recognizes and admits the principle that any private person can, by a simple and bare act, change the boundaries of his house, so that if the owner of the disputed house wishes, he can close one door and open another, as often as he pleases, thereby subjecting himself to the jurisdiction of one parish or the other, at his own discretion. This, he argues, leads to absurdities, especially concerning the validity of the sacraments, and in particular, of marriage. He imagines a case in which a woman who lives in the disputed house wishes to enter into marriage. After the banns have been announced by the parish priest, the owner of the disputed house converts the main entrance into a doorway leading to a dining room. The woman, by law, is then subject to the jurisdiction of the parish priest of Saint Gregory. If the...

[*Latin ed. p. 155*]

OF PAROCHIAL JURISDICTION 155: If this person assists at a marriage, will it be valid? Should he not refrain from performing further marriages in his parish? Should he, or should he not, postpone the marriage for thirty, or even forty, days, so that the woman may establish a new domicile? And if, after this delay, the lord of the house again approaches the altar for the marriage ceremony, what will happen? These absurdities strongly demonstrate the nullity of the decree. Furthermore, it is clearly shown from the very words of the decree, from the opinion of the Consultors of the Sacred Congregation, and from the very letters of information from the Archbishop to this Sacred Congregation, that the Archdiocesan Court has adopted this principle. Moreover, Menochii, adhering to authority, in *de adipisc. poss. Rem.* 4, no. 126, concludes that the decree itself is null by law, because of an error, not merely virtually, but explicitly stated in the very sentence. 3. It is said that no decree is valid by law, because it was issued without knowledge of the cause, and without knowledge of the cause, because the reasons presented by the parish priest were not read by the judge; indeed, in the very decree itself, it is denied that they were presented. Although there exists a letter from the Archdiocesan Court, in which it is declared that these reasons were received, nevertheless, ReifFenstuel, in *lib. 2 Decretal*, title 27, § 2, nos. 42 and 46, states that a sentence issued by a judge ignorant of the merits of the case is null by law. Vallensis, in the same title, § 3, no. 1; Engel, no. 1; Fagnanus, in *lib. 2 Decret*, on Instruments of Faith, chapter 12, no. 19; and Mascard, in *de Probat.* Vol. 3, Conclusions, 1296, no. 36, all agree. This defect, however, was immediately recognized by the Archdiocesan Court, according to the protestation issued by the parish priest of *S. Mariae a Charitate*, and therefore, after two days, a declaration was issued, in which it attempted to correct the words of the decree, in

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which it had stated that the reasons presented had not been presented. But the Orator adds in vain, because not only does such a declaration not have the force of the natural meaning of the words, but also because it is legally impossible: for the judge, having pronounced the sentence, has fulfilled his office, as testified by Schmalzgrueber, in *lib. 2 Decret*, title 27, § 4, no. 78, and Begundelli, in *Bibl. Canonico-Civilis practica*, verb. *Sententia*, § 7, no. 40.

[*Latin ed. p. 156*]

I. The Orator, having proceeded to this point, turns to another argument, striving to demonstrate that the disputed decree is not only unjust, but also infringes upon the rights of the Parish Priest of S. Maria de Charitate, firstly, because the house in question, with absolute certainty, belongs to the jurisdiction of said Parish Priest; he could, therefore, lawfully access it via the street called Lamme, which is a public way; consequently, the Parish Priest of S. Gregorii could not prevent him from passing through it, just as he could not prevent his entry through the courtyard and the sacristy. Indeed, he could not prevent passage through the courtyard, because this concerned only matters of honesty or decency; the Parish Priest of S. Maria could, therefore, be the judge in this matter. He cannot prevent passage through the street Lamme, as was demonstrated by Benedict XIV in the *Institutiones*, 89, n. 12, and especially n. 14. That Parish Priests are lawfully entitled to pass through public roads, even within the territory of another Parish, is demonstrated by the authority of this Sacred Congregation, as well as by the Sacred Congregation of Bishops and Regular Canons, particularly in a decree from Piacenza, dated November 24, 1713, which is cited by Ferraris in *Bibliotheca Canonica*, under the heading "Parochus," article 3, number 36.

Following these points, the Orator proceeds to demonstrate that the section of the street Lamme, from the corner of S. Felice to number 194, belongs more properly to the Parish of S. Maria de Charitate than to that of S. Gregorii; and he argues this with three supporting points. 1. Because the street S. Felice is separated from the street Lamme by a certain open space, which cannot, with any certainty, be considered part of the street Lamme, and a large part of the disputed house faces this open space. 2. Because the remaining part of the disputed house is terminated and enclosed by a certain alley, from which the entire house, as it were, constitutes an island; this alley leads to the street S. Felice. 3. Because the side of this house, on the same street Lamme, has no entrance through which the Curate of S. Gregorii could enter the houses on that side; thus, it can rightly be said that the Parish Priest of S. Gregorii has never, at any time, reached the extreme end of the street Lamme. To these points, if we add that the Parish Priest of Charitate has, from the very moment of the demarcation of the Parishes, always entered the disputed house without distinction, through

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both entrances.

[*Latin ed. p. 157*]

In the matter of the dispute, on the road of Saint Felix and in the lane of Lamme, in the presence of and with the knowledge of the deceased Archbishop, the Advocate rightly argues that the Archbishop, in establishing the boundaries of the parish of Saint Gregory, had spoken of the opposite side, or at most, of the lane of Lamme; for the Archbishop certainly knew that the side of the house in question most certainly belonged to the parish of Charity. He argues, secondly, that even if the lane of Lamme were private property, the decree would still be just, because the parish priest of Charity had prescribed a right of way through that lane, having used it for more than seventy years, and indeed with a title. He proves this first by the testimony of the owner of the aforementioned house, and also of Peter F., who has held the office of chaplain and curate in that same parish since the year 1821; of John Baptist G., archpriest and rural dean in the parish of Saint Lawrence in Panico, who held the office of vice-curate from the year 1841 to the year 1846; of Raphael P., archpriest and rural dean; of Vincent N., parish priest of Saint John in Monte in that same city; of the Municipal Authority, and of Joseph G., who was attached to the Municipality for a period of fifty-two years; and finally, by the testimony of sixteen other citizens, in order, from the priestly, noble, and common classes, without any exceptions of seniority. All of these unanimously testify that the parish priest of Saint Mary of Charity has always and without exception entered the disputed house, either through the door on the road of Saint Felix, or through the other door on the lane of Lamme. Moreover, they testify that the entrance through the lane of Lamme has always been more frequently used, and that the parish priest of Charity has entered the disputed house through it, whether on a holy Saturday, or to administer the Eucharist and extreme unction to the sick, or finally, to remove the bodies of the deceased. Given these facts, it is clear how great is the force of a peaceful possession for seventy-seven years; for Gregory L, in Canon, Volume 1, cause 16, question 4, and Alexander III, in the same decree, *Confinium*, have declared that a period of forty years is sufficient even for the prescription of property belonging to the Roman Church. Furthermore, it is observed that a right of way can be prescribed over alien land, if not by force, but...

[*Latin ed. p. 158*]

I. 5. Concerning the PAROCHIAL JURISDICTION, this must be established definitively, not provisionally, according to I. 10, ff. If a servitude is involved, nor is the knowledge of the opposing party required, according to Menochius, *de retin. poss. remed.* 5, n. 36, which was recognized by the Most Reverend Archbishop himself in his informative letters; only the fact of Novation presents an obstacle, but the Orator asserts that he has

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already shown what should be thought concerning this matter. Furthermore, he argues that if all the aforementioned points are true in the case of someone who possesses property without a title, then all the more so should it be said of the Parish Priest who possessed the property by title. Ferraris, *Biblioth. Can.*, *Verb. Praescriptio*, § 5, n. 26, demonstrates that a servitude of passage with a title can be established within a space of ten years against those present, and twenty years against those absent; *lib. 12, Can. de praescript. long. temp.* Lessius, *lib. 2. de iust. et iur.*, Canon 6, n. 28. Pirhing, *lib. 2. Decret.*, tit. 26, n. 119. Indeed, according to Benedict XIV, *instit.* 89, n. 14, when it is a question of a house subject to a certain jurisdiction, it is not necessary to have a servitude of passage, and it is also permissible to access another person's property through a private way. "If you find an obstacle," says the praised Pontiff, "you will overcome it." Thirdly, he refutes the disputed decree, because it intended the execution "even with an appeal interposed," although this is not a summary possessory judgment, nor a judgment that requires speed. Indeed, even if it were a possessory matter, since the judgment concerns jurisdiction, the appeal produces both effects, because it is necessary to prove the title, according to Baldi, as Menochius asserts in *de adipisc. poss. Remed.* 4, n. 839. But in the case at hand, the judgment was strictly a petitionary one, because it concerned property. However, in a petitionary judgment, an appeal has a suspensive effect; Pichler, tit. 28, *de Appell.*, n. 30, except for the case of a dowry, a wage, future support, a pious cause, and other matters that require speed, as Barbos argues in chapter 59, *de Appell.*, a, n. 5. Finally, he shows that the reasons upon which the Archiepiscopal Court based its decree are not at all suitable for the case in question. As for the three...

[*Latin ed. p. 159*]

The parochial jurisdictions are concerned. The first argument presented in the decree, it is stated, is derived from an edict of November 17, 1806, which established the boundaries of each parish. In the edict, it is stated that the street of Saint Felix belongs to the parish of Charity, and the street of Lamme belongs to that of Saint Gregory. To this argument, it is responded that the edict entirely favors the parish of Charity, because from it it appears that the disputed house was under the jurisdiction of the parish of Saint Mary of Charity, and that it could not have been removed from the jurisdiction of this parish, except by a division carried out by the competent authority; and since it does not appear that this has ever been done, the house remains under the jurisdiction of the parish of Saint Mary of Charity, to which it was assigned by the edict. According to the second argument, it is deduced that many records of souls presented by the aforementioned parish priest of Saint Gregory, from the year 1806 to the present day, indicate houses located at numbers 193, 194, and 195 on the street of Lamme, as being subject to his jurisdiction. The

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aforementioned parish priest of Saint Gregory asserts that he did indeed exercise jurisdiction over the house at number 193, until that entrance was closed and an entrance was opened onto the street of Saint Felix. He asserts that he exercised jurisdiction over the house at number 195, until it had an entrance on the street of Lamme; but since it was subsequently annexed to another property, which had an entrance on the street of Saint Felix at number 102, he lost jurisdiction, which he later regained, after a new separation was made. Therefore, he concludes that just as he had jurisdiction over the house at number 193 and also over the house at number 195, so too he should have jurisdiction over the house at number 194. Here, the speaker marvels that the Archdiocesan Curia should have accepted such a claim in favor of the parish priest of Saint Gregory; for he confesses that the house at number 194 has always been subject to the jurisdiction of the parish priest of Charity; and therefore, by describing it in the records of souls of his parish, he has certainly committed a solemn lie, which should never have been tolerated by the Archdiocesan Curia. Specifically, he states that the house at number 193 was the rectory of the parish of Saint Lawrence, which was dissolved in the year 1806, and the house was to be sold; that house was demolished, and a new one was built from the foundations, with a single entrance on the street of Saint Felix at number 101. What is surprising, therefore, that it should have been subject to the parish priest of...

[*Latin ed. p. 160*]

Regarding the house under number 195, it was observed that if any part of it constitutes a portion of the house under number 194, it could not have passed under the jurisdiction of the Parish of Saint Gregory without the authority of the Church. A third and principal argument was presented by the Archdiocesan Curia, based on the principle that access determines the extent of jurisdiction; therefore, since the main entrance of the house in question is located on Lamme Street, it must necessarily be subject to the jurisdiction of the Parish of Saint Gregory.

The aforementioned principle is readily admitted by the Orator; however, he argues that the difficulty lies in its application, and that this must be carefully and accurately examined and thoroughly assessed to determine when and how it can be applied, and when it should not be admitted, lest it lead to absurdities. Furthermore, he states that from this principle, two theorems arise which are entirely contrary to the Sacred Canons: 1. That the boundaries of parishes could be altered by the parishioners themselves. 2. That the boundaries of parishes could be uncertain, indeterminate, and changeable at the will of the laity.

Therefore, he concludes that this principle cannot be applied in practice, unless it concerns a house that is entirely new and newly constructed, or in the very act of defining the boundaries of parishes; and it is clear that this

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is the case, from the absurdities that would otherwise arise. He presents a case in which a person has a house that is bordered on all four sides by the boundaries of four different parishes. The owner of this building, in order to avoid the jurisdiction of his own parish, closes the door leading into the boundaries of that parish, and opens another door leading into the boundaries of another, and so on. It is clear to everyone that through this act, or through this innovation, the owner of the building cannot, by his own actions, legitimately avoid the jurisdiction of his own parish; otherwise, the owner could legally change the jurisdictions of as many parishes as there are sides to his building. What could be more absurd? From all of this, the Orator infers that the decree in question is null and unjust, and therefore must be rejected and entirely refuted.

[*Latin ed. p. 161*]

JURISDICTION. PASTORAL. 161 Having considered these matters, the purpose was to resolve the doubt: whether the Decree of the Archdiocesan Tribunal in this case should be confirmed or annulled. RESOLUTION. - The Sacred Congregation of the Council, after due deliberation, decided: "The house in question, in this case, belongs to the Parish of Saint Mary of Charity." THEREFORE, IT IS UNDERSTOOD: I. That the boundaries of parishes must be certain, defined, and immutable. II. That these boundaries cannot be altered, not even by secular authority, nor by the Bishop himself, except in cases permitted by law. Act "Tom. VIII, f. a sr., L X XXVII. U.

[*Latin ed. p. 162*]

FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS CONCERNING THE OFFERINGS AND THE SAFEGUARDING OF SACRED PROPERTY. A summary. In the year 1702, after a humble petition had been presented to the Most Holy Prince, so that the suppressed parish church of Saint Maur in the city of N. might be erected into a collegiate church, the Supreme Pontiff Clement X, approving of these desires, decreed by letters of June 3rd of that same year, the erection of the new collegiate church, which would consist of twenty canons and one Prefect, to whom the care of souls in the aforementioned church would be assigned. — "He bestowed all revenues and goods, both those left by the Elector and by Joseph P., the university, and the aforementioned individuals for this purpose, as gifts and assignments, as well as those left by the aforementioned Peter and other faithful, to the aforementioned church or chapel of Saint Mary of Graces, likewise called Saint Mary of Graces." Finally, he assigned to the Prefect ten ducats annually in coin of the Kingdom, from the revenues of the church being erected into a collegiate, and all and each fruits, revenues, and proceeds, rights, dues, and emoluments whatsoever of the aforementioned parish church of Saint Maur, thus suppressed and extinguished, both certain and

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uncertain, even those arising from the exercise of the care of souls and the administration of the sacraments, and other parochial functions, and which the aforementioned parish church of Saint Maur, and its rectors existing at that time, received and possessed before the aforementioned suppression and extinction, in whatever manner they were called." By the same apostolic letters, it was stipulated that the Chapter, that is, the Prefect and the Canons, should be subject to...

[*Latin ed. p. 163*]

JURIS APOSTOLICI, DE ECCLESIA ET CLERICIS, TOMUS I, CAPITULA DELECTIONIS, ETC. 163. Ad dictam ecclesiam... et ad illam sacristiam, mensam capitularem, fabricam, et ad omnes res et bona, tam spiritualia quam temporalia, prospero et felici gubernio, regimine et administratione, et ad reparationem et sustentationem onerum praedictorum incumbentia; ad distributiones cotidianas et alias emolumenta, exactionem, perceptionem, divisionem... Quaecumque statuta, ordinationes, capitula et decreta, quae Canonicis expressis vetant, ut aliquid umquam tempore, quibusvis causa, praetextu, ingenio vel fraude in exercitio curae animarum ingerant, nec quidquam tam ex iuribus et emolumentis certis et incertis exinde proveniens, quam ex fructibus, reditibus et proventibus praedictis dictae parochialis Ecclesiae praetendant vel exigant.

Iamdudum inter emolumenta adventitia, quibus eadem Ecclesia ditatur, enumerantur oblationes, quae intra annum, et praesertim die festo Sancti Titularis et Patroni Coelestis a fidelibus deferuntur, quaeque in cera, pecunia aliisque rebus pretiosis consistunt, nec non in eleemosynis missarum. Quamvis Praepositus ab antiquis temporibus has oblationes colligere, missarum intentiones Ecclesiae Clero distribuere, vota pretiosa aliis extantibus adhibere, caeterasque oblationes ad festum Sancti Patroni augustiori forma celebrandum, vel ad sacra utensilia reficienda impendere consueverit, tamen hodierni Canonici, opinantes sui iuris esse haec gerere, querelas detulerunt Ordinario, expetentes ut suis iuribus redintegrarentur.

Archiepiscopus, expediens iudicavit dissidentes revocare ad observantiam Decreti ab Emo Episcopo die 20 Iulii anno 1836 editi (in confirmationem cuiusdam Statuti), quod Capitulum confecerat, et cuius vi nonnulli canonici Sacristarum titulo insigniti nominabantur, qui oblationibus praeessem. At vero tale consilium Archiepiscopi pacem restituere non valuit, hinc die 29 Septembris 1868, Canonici quaestionem iuridice dirimi expostularunt coram eadem Curia, quae expensis rationibus hinc inde deductis, die 26 Ianuarii 1870 sententiam edidit, qua declaravit spectare ad Praepositum curatum Collegiatae Ecclesiae S. Mauri omnes et singulas eleemosynas, proventus, obventiones, quae fiunt in...

[*Latin ed. p. 164*]

Regarding the administration of offerings within the aforementioned

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Church: concerning other offerings given by the faithful for a specific purpose and end, the administrator shall only act as such, and therefore shall strictly be held accountable each year to the secretary of the Holy Visitation regarding the faithful fulfillment thereof, and especially concerning the Masses received through the generosity of the faithful. Within eight days, regardless of any postponement, from the promulgation of this decree, the Prefect and Chapter shall proceed to the election of Sacristans according to the decree issued during the Holy Visitation completed in the year 1836, and according to the articles confirmed by the Most Reverend Cardinal Judge of the same year, which are transcribed herein verbatim and judicially confirmed. Among the principal duties of the Sacristans shall be "to receive, note, and preserve the Masses, anniversaries, and other similar offerings received within the aforementioned Church each day. Each month, together with the Prefect and Curate, the distribution of Masses shall be made according to the established manner and form, with a proportion made between the Prefect, Canons, hebdomadaries, and other clergy, provided that they truly serve the parish. Regarding the fulfillment of these duties, the Sacristans shall report each year to the secretary of the Holy Visitation, under penalties at our discretion. » From this decree, which did not satisfy either the Canons nor the Prefect, both parties appealed to this Holy Congregation, before which the aforementioned doubt, written at the end, was to be resolved. Synopsis of the arguments. FROM WHAT REMAINS, IN FAVOR OF THE PREFECT. The advocate for the Prefect first pointed out that the controversy concerning the offerings is unnecessary and has no basis, since the alms for Masses have been distributed and are still distributed according to the needs of the Canons, Mansionaries, and other priests devoted to the Church, while the other offerings are spent for specific purposes according to the intention of those who offer them. Therefore, whoever collects and administers them, it is the same, since they cannot be disbursed in a different manner. However, he added,

[*Latin ed. p. 165*]

AND REGARDING THE SAFEGUARDING OF SACRED PROPERTY: 163. The principle of law is that offerings and alms, not destined for a specific purpose, belong neither to the Bishop nor to the Chapter, but to the Parish Priest, within whose parish boundaries they are offered, as taught by Cardinal De Luca in *Summa de Decimis*, § 4, n. 36, and in his *Disputationes de Decimis*, n. 6; indeed, sometimes such offerings are said to be for a determined amount, as taught by the same Cardinal De Luca in *Disputationes de Decimis*, disputation 19, n. 13. It makes no difference whether the offerings are collected within the confines of the Parish Church or are made at the altar, or in a chapel within the parish territory (*Pignatelli, Consult. Canon.*, 160, Vol. 4, § 44 and following), or even offered to an image of a saint belonging to a lay person (*Fargna de iure patr.*, p. 2, c. 14, 15, esp.

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12, n. 2). Furthermore, in the case of other offerings which are given in any place within the parish boundaries for a certain and determined purpose, the Parish Priest is considered the legitimate administrator, as stated by the Sacred Congregation of the Council in the case of the confraternity of Ferrari, on September 14, 1782, § *ad secundum dubium*; therefore, in the case of these latter offerings, the Prefect is only bound by the obligation to render an account to the Ordinary. The special law of the Chapter is fully in accordance with common law, namely the *Bulla Erectionis*, which, while determining and circumscribing the revenues of the Canons to only those rights and emoluments derived from the Palatine Hector, from Joseph Zampareilio, from the local Municipality, and from goods donated by the faithful to the Church of *S. Mariae gratiarum*, assigns to the Prefect all rights, revenues, and emoluments that belonged to the Parish, and which were previously received by the Parish Priest, expressly forbidding the Canons from claiming or demanding these things. It is, therefore, in vain that the Canons attempt to restrict the provisions of these apostolic letters to only those emoluments derived from the care of souls, since such a limitation is entirely excluded by the very fact that the aforementioned letters attribute to the Prefect any revenues, certain or uncertain, even those derived from the care of souls. To these reasons is added constant observance. The Municipal Syndic testifies that the offerings of the faithful have always been received by the Prefect, the Parish Priest, and have been disbursed for the purpose specified by those who offered them, as well as for the benefit of the Church.

[*Latin ed. p. 166*]

66. The obligation of administering the *oblationes* [offerings], established for a time to maintain the Church itself and to provide for necessary expenses, has never been imposed upon the Canons; hence, it is clear that the current custom is reasonable, since the right to collect and administer the *oblationes* is demonstrated as being coextensive with the honor of safeguarding and maintaining the Church and its sacred furnishings. The exception requested by the Canons is not supported, namely, that after the erection of the Collegiate Church, a single Chapter remains, morally legitimately subsisting, to which the habitual care of souls pertains, which care is exercised in the name of that same Chapter by the Provost; for if the facts are properly examined, it is evident that the Canons have had no other duty than that of singing the conventual Mass and the canonical hours. And in truth, Hector Paladin, in the year 1648, left property for the erection of a Collegiate Church, so that priests might sing the conventual Mass and the canonical hours each day; and the Municipality, in the year 1693, obligated itself for the same purpose to contribute 200 ducats annually, an obligation approved by the Royal Government on the condition that the Collegiate Church be erected "according to the form of the disposition of

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the aforementioned Hector Paladin."

Furthermore, the Bull of erection itself determines the duties of the Provost and the Canons, establishing a single and carefully defined office for one suitable presbyter: "who shall exercise the care of souls of the parishioners of said Church of Saint Maur, and hear confessions therein, and administer the ecclesiastical sacraments, and undertake all and each parochial duties, and shall also be bound to..." The Canons, on the other hand, "shall be bound each day, perpetually, at the appointed times, to chant and recite the divine hours, both morning and evening... without ever, at any time, etc., engaging in the exercise of the care of souls." Therefore, all revenues which formerly benefited the ancient parish are now devolved upon the Provost, and the Canons have no right to them, although they are endowed with property. The Papal Bull, the executive decree, and the Chapter statutes all concur, in which mention is made only of the performance of duties, without any mention of the care of souls or the custody of the Church and its furnishings; indeed, they forbid the Provost from taking a vow.

[*Latin ed. p. 167*]

Let it be understood that the matter of furnishings [SACHAS SUPELLECTILES] is to be discussed in Chapter, when dealing with those things which pertain only to the interests of the canons; and that, when the Superior is absent at the funeral of a deceased person, the senior canon should perform the customary functions, not by his own right, but in the name of the Superior. These things clearly demonstrate that the parish priest and the Chapter have always been recognized as two entirely separate entities, each of which has its own assigned duties and functions, which is also confirmed by the census records in which the Chapter's property is listed separately from that of the parish church of Saint Maur, and by the administration of the parish's assets undertaken by the Diocesan Deputation during the parish's vacancy, and by the distinction of the seal and of the sacred furnishings belonging to each, the custody of which is separately entrusted to the parish priest and the Chapter. Nor does the argument hold any weight that the canons draw from the words of the Papal Bull, when it states that the Superior and the canons together have the power to govern and administer the Chapter's treasury, the fabric, and all things and goods, both spiritual and temporal, prosperously and happily, and to repair and support the aforementioned burdens, and to collect, receive, and divide other emoluments, and to enact statutes and decrees. For the same Bull specifically designated and distinguished the duties and revenues of the Superior and the Chapter, expressly forbidding the former from interfering in the office and emoluments of the latter; therefore, the aforementioned words of the Bull must be understood to refer to the duties of the entire Chapter, of which the Superior is the principal part and head, and not to

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the administration of the church, nor to the custody of the sacred furnishings, which the acts of the Visitation recognize as the particular property of the church, and for which the canons have never expended anything. Now, if the Superior has the right to the property and administration of the offerings, then the delegation of the sacristan is completely and utterly superfluous, indeed, contrary [to the situation]. From the Bull, which prohibits any interference by the canons in the parish revenues, it must be repeated that sacristans have never existed, except for one year in which one served to assist the parish priest in his old age.

[*Latin ed. p. 168*]

168 Regarding the administration of the oblations, a plan was adopted and confirmed by the Most Reverend Ordinary in the year 1836, which involved adding two Canons to the same Chapter, designated with the title of Sacristans, but under the same dependency. However, upon the death of the aforementioned, they were removed from office. At present, they cannot be recalled either by common law, since common law requires such officials only in parochial churches incorporated into Chapters; nor by the ceremonial decree of Benedict XIV, which assigned to the Sacristans the office of guarding the sacred vessels and church property in cathedrals and collegiate churches, or in parishes dependent upon them, unless custom or statutes otherwise provide, as is the case here; nor by the force of the episcopal decree of the year 1836, by virtue of which the Sacristans were under the dependency of the Prefect; nor finally, by the present letter of the Archbishop, by which they are recalled in the manner and form in which they were instituted in the year 1836. Furthermore, with this innovation, not only would two entirely distinct moral entities be confused, but also the Chapter would be given an opportunity for abuse, since it would be involved in parochial functions. Therefore, the opinion of the Ordinary, which does not sufficiently define the attributions, but only mentions that some are to be recalled "among the principal duties," must be rejected, as it exceeds the jurisdiction of the Ordinary, who cannot destroy the distinct personality and the independence which have been granted to the Prefect by Apostolic Letters, and which have been confirmed by both the Chapter statutes and a long-standing custom of 168 years. Since no defense had been presented by the Chapter, the intention was to resolve the following doubt: "Whether and how the sentence of the Archdiocesan Court of N. dated January 26, 1870, should be confirmed in this case." RESOLUTION. The Sacred Congregation of Bishops and Regulars, on May 3, 1872, judged that it should be answered: "Affirmatively, according to the manner. The manner is that the office of the sacristans should be suppressed with regard to all those things which pertain to the Church and the Parish." The Canons appealed from this decision, and their Procurator divided his defense into two parts. In the first part, he speaks of the oblations; in the other, he

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discusses the Sacristans and their duties.

[*Latin ed. p. 169*]

AND REGARDING THE SAFEGUARDING OF SACRED PROPERTY 169 m Regarding what has been brought forward, the Defender submits that the intention is not to claim for himself the offerings and alms of the masses and other revenues, but rather to have a share, together with the Provost, in the administration and disbursement of these same funds for the benefit of the Church in which they are collected, and in the distribution of the revenues among the priests. To support his argument, he presents three foundations upon which this Sacred Congregation's resolution is based: arguments drawn from Canon Law, and from the words of Apostolic Letters, and from established custom. Indeed, he states that, according to the certain provisions of Canon Law, the offerings and alms collected in a parish church belong to the Parish Priest: but it is to be understood that the parish church of St. Maur can no longer be considered a parish, after it has been suppressed, together with its title and name, by Apostolic Letters, and converted into a collegiate church. For it is clear from the Bull that "you shall perpetually suppress and extinguish, and you shall convert the aforementioned parish church of St. Maur, thus suppressed and extinguished, into a secular and distinguished collegiate church under the invocation of the same St. Maur, with a choir, a chapter, a chapter table, a chest, a seal, common funds, and all other insignia of a collegiate church." Therefore, there remains no parish to which a collegiate church is attached, but rather the parish has completely disappeared, since it is known that parish churches lose their own nature whenever a collegiate church is established within them, as Bouix states in Cap. 3, § 3. Card. Petra comments in Const. Innoc. IV, sect. 2, n. 35. Reclusius de re parodi, vol. 1, n. 189. Laur. For. benefic. part. 3, q. 964, n. 4. Moreover, the Apostolic Letters, by establishing a Provost with pastoral care, did not intend to revive the parish church, even though they were abolishing it, but rather to establish the dignity of the Provost, to whom the quality of Head of the College also belongs, and therefore, a part of the chapter is integrally present: "all of whom, together with the aforementioned Provost, constitute the chapter of the aforementioned church." Indeed, if the Provost presupposes the union of others to whom he is Prefect (Ferraris V. Praepositus), then all coexistence of two moral entities is excluded, which are autonomous and independent.

[*Latin ed. p. 170*]

170 (Ullis \ MSI R A N 1) Obligations are demanded. Wherefore, concerning the totality, that is, the entire Chapter which, together with the Prefect, constitutes a single entity, the quality of the Rector pertains, which cannot be doubled, as is clear from Chapter 15 concerning endowments. See

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De Luca, Disputation 9, verse 5, Adnotationes ad Concilium Tridentinum, Disputation 33, number 7, concerning parishes, and therefore it must be recognized as a homogeneous part, and not as a distinct personality. Concerning this matter, see Gonzalez, Book 1, Decisions, title 14, Chapter 1; Wan Espen, Ius Eccl., page 1, title 2, chapter 1. Furthermore, the Defender argues that the Prefect cannot be called the Parochial Priest after the suppression and conversion of the Church into a Collegiate institution (Reclusius de re parochiali); for the habitual care remains with the Chapter, which designates a Canon, and most often the same Chapter exercises it, as the Doctors accustomed to the dispositions of the Bull "Ad honorandum" of Benedict XIV, and especially Ferraris, cited in that place, number 109, state: "there, the care of souls belongs to the College and is exercised by the Prefect." De Luca, Disputation 60, concerning Benefices, states that "habitual care resides in the College as a whole, in whose name it is exercised by the vicar." It does not impede that in Apostolic Letters, Canons are prescribed to perform their own duties, without it ever being the case, for any reason, under any pretext, ingenuity, or color, that they interfere in the exercise of the care of souls; for this prohibition does not exclude the habitual care of souls belonging to the Chapter, but is expressly directed to prevent the interference of the Canons in the exercise of the parochial ministry, which has been fully and completely assigned to the Prefect, and this by virtue of the instituted discipline to eliminate confusion in the aforementioned exercise; after the Decree, as is clear from Alexander III. Thus, while on the one hand, the faithful recognize a certain and determined Parochial Priest, disturbances are prohibited which arise from frequent changes, from which arises the necessity of attributing the actual care to a single subject, which is why the Chapter's vicar becomes it: Fagnanus, Book 1, Doctrine, chapter 6; De Luca, Disputation 35, number 12, concerning Jurisdiction, Disputation 33, number 12. The Defender confirms this reasoning by observing that, just as there is no Rector of the Church who is a Canon individually,

[*Latin ed. p. 171*]

AND REGARDING THE CUSTODY OF SACRED CHURCHES 171, thus the Rector is not the Prefect, but the entire Chapter: Corrai, lib. 2, cap. 2, de prax. benef., "but the care nevertheless remains with the Chapter, of which the true Rector is merely a part." To this, he adds other external arguments, among which he enumerates the obligation that weighs upon the members of the Chapter to make a profession of faith, which, according to the decrees of the Council of Trent, Session 14, chapter 12, on reform, obligates those who have charge of souls: *Inst. eccl.* of Pius IV, 60, n. 1; Barbosa, *De off. et potest. Episc.*, p. 3, alleg. 61, n. 15; and also the examination that must be undergone by the local priests to test their suitability, not only in Gregorian chant, but also in moral theology, which, indeed, are all required for benefices with cures: Wan Espen, *Ius Eccl. Univ.*, p.

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2, tit. 22, cap. 3. But what if? From the statutes of the Collegiate church, chapter IV, in which it is stated that the funeral rites of the deceased are to be performed by the senior canon in the absence of the Prefect, or by another appointed for this purpose, it is clearly deduced that the Prefect performs his office not by his own right, but as the highest dignity which represents the entire Chapter. But even if the Prefect retains the care of souls, both habitually and actually, and exercises it by his own right, will the superior Prefect withdraw from the competition? Certainly not, says the Defender, for even in this hypothesis, the Rector is the Rector of that care, and not of the Collegiate church, which was established not with the union of a parish, but independently. The unity of the minister prevents the disturbances that would arise from the coexistence of two independent persons in the same church. Therefore, the principle, if applied to offerings collected both inside and outside the parochial church, cannot be applied in the case in which the parochial church and the parish priest are absent, and only the Collegiate church with its Chapter remains. Here, the Defender establishes the criterion of his reasoning, namely, that the question is not about the offerings that are given to the Prefect for the administration of the sacraments and the exercise of parochial functions, but about those that are collected on the two solemn days dedicated to St. Maur. With this established, even if such offerings had been made to the parochial church, they would nevertheless be intended for the restoration and maintenance of that very church, and therefore, in accordance with...

[*Latin ed. p. 172*]

172 Regarding the obligations of administering ecclesiastical goods, those obtained through custom are to be considered as fulfilling the presumed will of those offering them. Hence, the Doctors unanimously impose a limitation on the general rule, which favors the parish priest. Cardinal De Luca, in his *Disputationes*, section 19, should be heard above all others. He concludes: "It is reasonable to presume that the intention of the faithful is to dedicate their offerings to the construction, ornamentation, or endowment of that chapel or church; therefore, it seems more appropriate to allocate them regularly for the common expenses, as is more commonly practiced." This must be admitted with even greater reason concerning the offerings and alms collected in collegiate churches, and those offered by faithful, even those from outside the parish, for the sake of devotion towards the heavenly patron, which are entirely to be applied to the maintenance of the chapel, to which the Chapter is responsible as its Rector. And indeed, when a permanent and immovable Rector is established in a church or chapel, this right belongs to him, and not to the parish priest, as stated by Pignatelli, volume IV, consultation 83, number 3, and by the Sacred Congregation in Caesena, April 2, 1861, and by the Sacred Congregation of the Council in Foligno, instruction 18,

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November 1865, which is consistent with Question XXVIII of the Decree of Urbis et orbis, dated December 10, 1703. Therefore, if this principle applies to churches under patronage or to confraternities, it must apply even more strongly to collegiate churches. This is evident from the pronouncements of the Chapter and the Sacred Rota, which have repeatedly defined that the administration of the revenues of the church is common to the Chapter, and not exclusively the property of the head of that chapter, as stated in Decisions 16 and 183, page 1, number 1. Following this, the Defender of the Chapter requests an argument from Apostolic Letters, which appropriately define the duties of the parish priest and the canons, and which determine the emoluments of each party. To this, it is responded that the office of the parish priest does not imply including the distinct quality of the collegiate Rector. Regarding the emoluments, the same author cites other passages from the same document, in which general and indefinite terms establish the emoluments for the care of souls "from certain and uncertain emoluments, and not from the fruits, revenues, and proceeds of the aforementioned parish church"; and he relates the emoluments of the canons in such a way that...

[*Latin ed. p. 173*]

AND REGARDING THE SAFEGUARDING OF SACRED PROPERTY

173 The Bulla states "revenues, censuses, and all emoluments of any kind and originating from any source whatsoever." From this, it is clear that in assigning revenues to the Parish Priest, no mention is made of offerings, which certainly cannot be confused with revenues, between which there is a significant difference in meaning. An offering generally signifies anything offered to the Church, whatever the manner in which it is given (Reiffenst. lib. 3. Decis. tit. 3.). On the other hand, a revenue denotes industrial income: thus, Vicat. Voc. iuris states, "Generally, a revenue signifies an accession which either proceeds from the very industry of a person, such as wages and pensions derived from the lease of urban properties, the rental of animals, etc." (Forcell. v. obventio). Furthermore, the opposing party incorrectly interprets the Pontifical Bulla in granting revenues to the Parish Priest, using the amplifying clause "even in consideration of the exercise of the care of souls"; whereas, if the context in which the adverb "even" is found is carefully examined, it becomes clear that the Bulla, rather than referring to two classes of uncertain revenues, considered a double reason and justification for assigning these revenues to the Prelate, granting him the cumulative right to receive them, not only as a result of his position as head of the Chapter, but also as one fulfilling parochial duties. Such an amplification includes not only uncertain revenues of the Collegiate Church, but also those from which he independently benefits and as head of the Collegiate. After these points, the defender refutes the argument based on custom, which has lasted for 167 years, and maintains that some

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of the reasons presented to prove it are of no weight, since those derived from census tables, when it is established in law that census tables indicate and do not prove; while others are not without suspicion, such as the testimonies of the municipal Syndic, since the right of patronage belongs to the Prelature, and since they are found to be different from other testimonies previously issued, especially those from the year 1863. Finally, turning to the second part of the defense, the matter of the sacristans' office and their duties is examined, noting that the Chapter, using the authority granted to it by the Bulla of erection, has drawn up statutes which the Archiepiscopal Curia has approved, in order to...

[*Latin ed. p. 174*]

17. CONCERNING THE ADMINISTRATION OF OFFERINGS, ETC. The nomination of sacristans, along with the duties pertaining to them, must be in accordance with all ecclesiastical laws. However, the opinion of this Holy Congregation, which abolished the office of sacristan with regard to all matters pertaining to the Church and parish, is considered contrary to the general provisions of the single chapter concerning the office of the sacristan, in which it is stated: "that the sacristan should know that he is subject to the archdeacon, and that the care of the sacred vessels, vestments, or the entire ecclesiastical treasury pertains to his care." This is also confirmed by the *Caeremoniale Episcoporum* approved by Benedict XIV and Cardinal De Luca. It is of no avail to object that the constitution concerning sacristans was temporary, and therefore made to provide assistance to the prelate, since that provision should be considered definitive, as it does not include any limitation of time, and is, above all, suitable for removing disturbances. Based on this, the Defender of the Faith requested that this Holy Congregation reconsider its decision.

RESOLUTION. – Regarding the proposed question, whether to adhere to or retract from previous decisions in this case; the Holy Congregation of Bishops and Regular Canons decided: To adhere to the previous decisions and to uphold them.

THEREFORE, IT IS UNDERSTOOD:

I. The administration of offerings and alms which are not destined for a specific purpose, does not pertain to the Bishop or the Chapter, but to the parish priest, within whose parish boundaries they are collected.

II. However, alms and offerings which are given in any place within the parish boundaries for a certain and determined purpose, the parish priest is considered the legitimate administrator, and is only obligated to render

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an account of them to the Ordinary.

[*Latin ed. p. 175*]

175 DECREE of Lucius. Concerning the Beatification and Canonization of the Venerable Servant of God Aloysius Mary Baudouin, Founder of the Congregation of the Daughters of Mary Immaculate, and of the Society of the Ursulines of Jesus, commonly known as of Chavagnes. Whereas, on the Ides of November in the year 1873, Our Most Holy Lord Pope Pius IX, with paternal benevolence, ordered that an Ordinary Congregation of Sacred Rites be held, without the intervention or vote of Consultees, to examine the reputation of sanctity of life, virtues, and miracles of the aforementioned Venerable Servant of God, Aloysius Mary Baudouin, at the urgent request of the Reverend Father Gustavo Canonico Gallot, Honorary Chamberlain of the same Most Holy Lord, and Postulator of the Cause; and whereas, the Eminent and Reverend Cardinal John Baptist Pitra proposed the following question to be discussed in the Ordinary Congregations of Sacred Rites held at the Vatican on the aforementioned date: "Does it appear that the Apostolic Process of Lucius, constructed upon the reputation of sanctity of life, virtues, and miracles in general of the aforementioned Venerable Servant of God, is valid and relevant in this case and to this effect?" The Eminent and Reverend Fathers, Prefects of the Sacred Rites, after mature deliberation, and having heard the voice and written opinion of the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, judged it necessary to respond "Affirmatively." On the 28th of November, 1874. These matters, faithfully reported by the undersigned Secretary, having been presented to Our Most Holy Lord Pope Pius IX, His Holiness approved and confirmed the written decision of the Sacred Congregation. On the 3rd of December, in the same year. C. THE BISHOP OF OSTIA, AND VELITERN. CARDINAL PATRIZI, SECRETARY OF THE HOLY ROMAN CHURCH. *[Seal]* D. Bartolini, SECRETARY OF THE HOLY ROMAN CHURCH.

[*Latin ed. p. 176*]

176 DECREE concerning the Beatification and Canonization of the Venerable Servant of God, John Baptist Mary Vianney, parish priest of the village of Ars, in the diocese of Belley. Present were the Reverend Monsignor Theodore Boscredon, Canon of Belley, Honorary Chamberlain to the Most Holy Pope Pius IX, and Promoter of this Cause; and the Eminent and Reverend Cardinal John Baptist Pitra, Proponent of the Cause. The following question was proposed to the Ordinary Sessions of the Sacred Rites: "Whether the judgment rendered by the Judges delegated by the Most Reverend Bishop of Belley concerning the aforementioned cult of the Venerable Servant of God, or concerning the interpretation of the Decrees of Pope Urban VIII, should be confirmed in the case and for the purpose

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in question?" After careful consideration, and after hearing the voice and written opinion of the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, the Eminent and Reverend Fathers presiding over the Sacred Rites judged that "the judgment should be confirmed." November 28, 1874. Subsequently, a faithful report of the above was made to the Most Holy Pope Pius IX by the undersigned Secretary of the Congregation of Sacred Rites, and His Holiness deigned to declare the Rescript of the Sacred Congregation to be entirely valid and confirmed. December 3, in the same year. C. THE BISHOP OF OSTIA AND VELLETRI. CARDINAL PATRIZI, SECRETARY OF THE HOLY ROMAN COLLEGE. [Seal] D. Bartolini, SECRETARY OF THE HOLY ROMAN COLLEGE. The Eminent Monsignor Peter Avanzini was afflicted by a grave infirmity, and therefore entrusted the task of editing six fascicles of this periodical to Monsignor Zephyrino Zitelli of the Sacred Theology. The Reverend Aloysius Veccia was appointed as his assistant. When he has completed his office, the task of continuing the same periodical will be entrusted to him. It has been entrusted to the Rector of the Apostolic Seminary for Missions, and to other men, whose names will be published as soon as possible.

[*Latin ed. p. 177*]

(77 OF THE MOST HOLY DOMAIN [YOUR MOST HOLY FATHER, POPE PIUS IX, BY DIVINE PROVIDENCE, ADDRESS GIVEN ON THE TWENTY-FIRST DAY OF DECEMBER, 1874, TO THE CARDINALS OF THE HOLY ROMAN CHURCH, IN THE VATICAN BUILDINGS —>&&>&5&4?*&&*— VENERABLE BROTHERS. Seeing how the trials and tribulations of the Church of God increase daily, we feel all the more that we ought to use tears rather than words, in the face of such an assault on truth and justice, concerning the calamities of human society, and concerning the blindness of the wicked. For impiety, driven by a mad spirit of liberty and bound by a close pact, widely dominates, and, having associated with itself schismatics, heretics, and infidels, it extends the power of its malice, using violence and deceit, and making men's minds subject to itself through hope and fear, striving to overthrow the Catholic Religion, if it could, in order to fulfill the vows of establishing its own kingdom, namely, a kingdom of ethnic corruption, from which Christ the Lord delivered the human race and transferred it into the light and kingdom of God. Under this conspiracy of the enemies of God, the Catholic Church groans grievously; and it is not necessary for us to remind you, Venerable Brothers, of its sorrowful condition in the German Empire, in Switzerland, and in the central and southern regions of Americae, since you are all aware of so many of its sorrows, and are sharers in our own pain. But, acting today with you concerning the confirmation of the Patriarch of Antioch of the Syrians, we cannot, Venerable Brothers, but with the deepest sense of sorrow, deplore the bitter persecution by which

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the Armenian Catholics are afflicted in the Turkish Empire, prayer, Tom. VIII, f »sc. L XXXVII. 12.

[*Latin ed. p. 178*]

I78 ADDRESS OF POPE PIUS X. are lamented. For there, the legitimate Patriarch of the Armenians of Cilicia was unjustly expelled, and the civil authorities presume to consider those who were driven out as Catholics, who, being rebellious against Our Authority, and refusing due obedience to the aforementioned Patriarch, have abandoned the flock of Christ, and have miserably fallen away from the Catholic unity. To these, civil protection is granted; while the true faithful, who with great virtue endure all hardships in order to preserve the ancestral religion, are subjected to the hatred and fury of the Neoschiastics, and their property and churches have been violently seized in many places by the leaders and agents of the Neoschiastics, and they themselves are compelled to gather for divine services and sacraments in private homes. Nor do the very laws of this age defend them, by which, while freedom of conscience is proclaimed, it should be free for them to have their own churches, to profess their own faith, and to adhere to their own pastors; nor do the solemn conventions initiated among powerful princes defend them, in which, besides other matters, full consideration was given to the freedom, security, and possessions of Catholics living within the Ottoman Empire. Where now is the faith that has been given, and the sanctity that has been accepted? Where is the zeal to defend it, and to help those who are oppressed? Recounting these evils, We cannot, Venerable Brothers, but be deeply grieved, seeing on the one hand how much the impious and unfaithful have, with cunning hypocrisy, stirred up war against God and against the Divine work which He Himself founded on earth, which He governs with His Spirit, and which His promises protect; and on the other hand, not only are no objections raised to such a nefarious conspiracy, but assistance and encouragement are added, and it is not considered that for the sake of the Church, and for the rights of the oppressed, all other human rights and the tranquility of civil society cannot remain secure. But in the midst of such a storm, let all Our trust, Venerable Brothers, firmly persevere in God. For the cause which We defend is God's cause, and although the Divine Master has foretold to us pressures in this world, He Himself does not abandon those who hope in Him, and He will remain with us until the end.

[*Latin ed. p. 179*]

THE ADDRESS OF POPE PIUS X. He promised that the summary of the future century would be. For is it not the power of His divine grace that, until this day, has sustained, in so great a struggle, both the Venerable Bishops, and the Priests and the faithful in Germany, in Switzerland, in the regions of the East, and in the lands of America, so that they have

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given admirable examples of constancy, zeal, faith, invincible patience, and virtue, to the great glory of religion? Therefore, let us give thanks to Him, most eminent, who is present and aids His Church in so many tribulations; and then let us call upon Him, both with fervent prayers, and with the discipline of a holy life, that He may continue to strengthen us and all His people in this battle, that He may illuminate the minds of the erring with His light, and bend their hearts, and that, just as our Redeemer, not in His omnipotence, but in our humility and weakness, overcame the strong armed, so may we, with the virtue of patience and justice, overcome the opposing powers. If we call upon Him in this way, we can have no doubt that He will quickly respond to us in His goodness: "Your salvation is from Me."

Now, concerning the needs of the Catholic Oriental Churches, and the new Patriarch of the Syrians, we inform you, Venerable Brothers, that after the late Venerable Father Ignatius Philip Harcus, whom We confirmed and instituted as Patriarch eight years ago, having been elected according to custom by the Syrian Bishops, the Syrian Bishops, some in person, others through their representatives, convened at the Synod in the Church of Saint Mary, the Liberator, in Lebanon, to which the Venerable Father Dionysius Scelhot, the Syrian Archbishop of Alep, presided with Our authority, after the usual prayers, all with one mind, through secret votes, elected the aforementioned Venerable Father Dionysius Scelhot as Patriarch of Antioch of the Syrians, and then, both the elected and the electors, having sent us letters concerning this matter, they earnestly beseeched Us to confirm this election with Our Apostolic authority, and to adorn the elected with the sacred Pallium. After all these things have been carefully and thoroughly examined by Our Congregation for the Propagation of the Faith, We, with the advice of the same Congregation, have decided...

[*Latin ed. p. 180*]

ALLOCUTION OF POPE PIUS X.

Most beloved sons, we have considered that the aforementioned Venerable Brother Dionysius Scelhot, Patriarch of the Syrians of Antioch, has declared his resignation, and that we should bestow upon him the Pallium, taken from the Body of Blessed Peter, confident in the hope that, with God's help, he will be a strong aid and support to the Catholic Church of the Syrians, especially in these difficult times, and a zealous advocate for the religion and the salvation of souls, and a diligent fulfiller of the duties of his pastoral office. What do you think? By the authority of the Almighty God and the Holy Apostles Peter and Paul, and by Our own authority, we confirm and approve the election or petition made by the Venerable Brothers Bishops of the Syrian Rite concerning the person of the

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Venerable Brother Dionysius Scelhot, Patriarch, whom we release from the bond by which he is bound to the Church of Alep, and whom we transfer from the Patriarchal Church of Antioch to the Patriarchal Church of the Syrians of Antioch, and whom we appoint as Patriarch and Pastor of that same Church, as will be expressed in the Consistorial Decree and Schedule, notwithstanding anything to the contrary. In the Name of the Father, and of the Son, and of the Holy Spirit. Amen.

[*Latin ed. p. 181*]

181 BY THE DIVINE PROVIDENCE OF OUR MOST HOLY LORD, POPE PIUS IX, ENCYCLICAL LETTER TO ALL PATRIARCHS, PRIMATES, ARCHBISHOPS, BISHOPS, AND OTHER ECCLESIASTICAL SUPERIORS IN COMMUNION WITH THE APOSTOLIC SEE, AND TO ALL THE FAITHFUL. PIUS IX. Venerable Brothers and beloved Sons, health and the Apostolic Blessing. Moved by the grave calamities of the Church and of this age, and by the necessity of imploring divine assistance, We have never neglected, during Our Pontificate, to exhort the Christian people to appease the Majesty of God and to merit heavenly clemency through holy conduct of life, works of penance, and pious acts of supplication. For this purpose, We have on several occasions, with Apostolic generosity, opened the spiritual treasures of Indulgences to the faithful, so that, inflamed with true penance and cleansed from the stains of sin through the sacrament of reconciliation, they might approach the throne of grace with greater confidence, and become worthy to have their prayers graciously received by God. This, as in other times, We have considered especially necessary on the occasion of the Most Holy Ecumenical Council of the Vatican, so that this most important work...

[*Latin ed. p. 182*]

182. This Encyclical Letter, for the benefit of the entire Church, is likewise to be aided by the prayers of the whole Church before God; and although, due to the calamities of these times, the celebration of the same Council has been suspended, nevertheless, the Indulgence to be obtained on that occasion, which we have promulgated, shall remain, as we have decreed and declared, in its full force, efficacy, and vigor, for the good of the faithful people. However, as the course of these unhappy times proceeds, the year is now the seventy-fifth since the year one thousand eight hundred and twenty-five, that is, the year which marks that sacred interval of time which the holy custom of our ancestors and the institutions of our Predecessors, the Roman Pontiffs, have consecrated to the celebration of the universal Jubilee. How much veneration and religious observance have been given to the Jubilee year, when the tranquil times of the Church allowed it to be properly celebrated, the monuments of ancient and more recent history testify; for it has always been considered as a year of salvation, a year of

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expiation for the entire Christian people, a year of redemption and grace, a year of remission and indulgence, to which all the faithful from all over the world would come to this our beloved City and the See of Peter, and to all the faithful, the most abundant safeguards of piety, reconciliation, and grace were offered for the salvation of souls. This pious and holy solemnity has been witnessed by this very century, when our blessed Predecessor, Pope Leo XII, in the year 1825, proclaimed the Jubilee, and this benefit was received with such fervor by the Christian people, that the same Pontiff was able to rejoice that a constant stream of pilgrims had flocked to this City throughout the year, and that the splendor of religion, piety, faith, charity, and all virtues shone forth marvelously in it. Oh, that the condition of our own times and of civil and religious affairs were such that, although we had to omit the greatest solemnity of the Jubilee, which occurs in the year 1850 of this century, due to the sad circumstances of the times, we might at least be able to celebrate it happily.

[*Latin ed. p. 183*]

EPISCOPAL LETTER. 185. We could, according to that ancient rite and custom, which our forefathers were accustomed to observe! But, God permitting, not only have those great difficulties, which at that time prevented Us from announcing the Jubilee, not been removed, but they have, on the contrary, been increased day by day. Nevertheless, considering the many evils which afflict the Church, the many efforts of its enemies to uproot the faith of Christ, to corrupt sound doctrine, and to spread the virus of impiety, the many scandals which are everywhere imputed to those who believe in Christ, the widespread corruption of morals, and the shameful subversion of divine and human rights, so widely diffused and so fruitful in ruin, which tends to undermine the very sense of right in the minds of men; and considering that, in so great a multitude of evils, it is the more Our duty, as Our Apostolic office requires, to safeguard and promote faith, religion, and piety, to foster and increase the spirit of prayer, to stir up the hearts of the fallen to repentance and amendment of manners, to redeem the sins which have deserved the wrath of God, for which the celebration of the Holy Year is especially directed; We have judged that We ought not to deny to the Christian people, in this occasion, that salutary benefit, preserving that form which the condition of times allows, so that, strengthened in spirit thereby, they may advance with ever greater zeal in the paths of justice, and may more easily and abundantly attain divine reconciliation and forgiveness through expiation of their faults. Let, therefore, the entire Church militant in Christ receive Our words, in which We announce and proclaim the Great Jubilee, to be celebrated throughout the whole year 1875, which is now approaching; for the sake of which Jubilee, and with a view to the aforementioned Indulgence, granted on the occasion of the Vatican Council, in the form of a Jubilee, We suspend it, at Our pleasure

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and that of this Apostolic See.

[*Latin ed. p. 184*]

184 ENCYCLICAL LETTER: And declaring this, we open wide that heavenly treasure, which has been granted to Our dispensation for the salvation of mankind, through the merits, sufferings, and virtues of Christ the Lord, and of His Virgin Mother, and of all the Saints. Therefore, trusting in the mercy of God, and in the authority of the Blessed Apostles Peter and Paul, and exercising the supreme power of binding and loosing which the Lord granted to Us, although through merits, We grant to all and each of the Christian faithful, whether dwelling in Our beloved City, or coming to it, or existing in any part of the world outside the aforementioned City, and remaining in the grace and obedience of the Apostolic See, who are truly penitent and have confessed their sins, and have received the Holy Communion, that they may visit, once a day for fifteen consecutive or interpolated days, either the basilicas of the Most Holy Apostles Peter and Paul, and also the basilicas of Saint John Lateran and Saint Mary Major in the City, or, after these Our Letters have reached their knowledge, another church designated as the cathedral or the largest church, and also three other churches in the same city or locality, or in its suburbs, by the Ordinary of the place, or by his vicars, or by others acting under their authority, and that they may devoutly offer prayers to God for the prosperity and exaltation of the Catholic Church and of this Apostolic See, for the eradication of heresies, for the conversion of all who are erring, for the peace and unity of the entire Christian people, and in accordance with Our intention, that they may obtain, during the aforementioned period of time, a plenary indulgence for all their sins, remission, and forgiveness, once.

[*Latin ed. p. 185*]

We grant, and likewise decree, that this indulgence may be applied, as a form of suffrage, to the souls of those who, united to God in charity, have departed from this life. Furthermore, those who are traveling or on a journey, so that, when they return to their homes or to a certain destination, having completed the aforementioned acts and visited the Cathedral Church or the largest church, or the parish church of their place of residence or destination, the same number of times, they may obtain and enjoy this Indulgence. We also grant to the aforementioned Ordinaries the power to allow those who, because of the circumstances of Monial oblates and other girls or women living either within the enclosure of monasteries, or in other religious or pious houses and communities, as well as to hermits and solitaries, and to all other, whether lay or secular clergy, or regular clergy, who are in prison, or in captivity, or suffering from some bodily infirmity, or detained by any other impediment, may fulfill, in place of the aforementioned visits, only those visits prescribed in this document;

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and to dispense to children who have not yet been admitted to their First Communion, as well as to all others, individually or through their superiors or regular prelates, or through prudent confessors, to prescribe other works of piety, charity, or religion in place of the aforementioned visits, or, respectively, in place of the aforementioned sacramental Communion, which they are to perform. Moreover, we grant and permit, under the same conditions, to Chapters and Congregations, both secular and regular, to sodalities, confraternities, universities, or colleges that visit these churches in a procession, to reduce the number of visits to a smaller number, according to their prudent judgment, and we grant and permit this also. Furthermore, to the same Monials and their novices, that...

[*Latin ed. p. 186*]

By this Apostolic Letter, We grant that any Confessor approved by the Ordinary of the place where the monasteries are established, to hear the confessions of nuns; and We grant permission and the faculty to all other Christian faithful, both lay and secular clergy, and of any Order, Congregation, or Institute, even those specifically named, to choose any secular Priest, or any regular Priest of any Order or Institute whatsoever, who has been approved by the Ordinary of the place, within whose city, diocese, or territory the confessions are to be heard, to hear the confessions of the laity, provided that those who sincerely and seriously intend to participate in the present Jubilee and undertake the necessary works to obtain its benefits, may approach these confessors for confession; and, in this instance, and for the sake of conscience only, they shall be absolved from excommunication, suspension, and all other ecclesiastical sentences and censures, whether imposed by law or by men, even by the Ordinaries of the places and by Us or the Apostolic See, in any case whatsoever, and even in cases reserved to the Supreme Pontiff and the Apostolic See, and those things which, although not explicitly mentioned in this grant, are understood to be granted, and also from all sins and excesses, however grave and enormous, even those reserved to the Ordinaries, to Us, and to the Apostolic See, as the case may be, with the salutary penance and other things that are legally prescribed being imposed upon them; and also from any vows, even those sworn and reserved to the Apostolic See (except for vows of chastity, religion, and obligations accepted from a third party, or in which the interests of a third party are involved), and also from those penances which are called preventative of sin, unless a future commutation is made, by the judge.

[*Latin ed. p. 187*]

ENCYCLICAL LETTER: Furthermore, We decree that it may be permitted, in such a manner that those who, by committing sin, have not fulfilled their prior vows, may, in other pious and salutary works, change the subject matter of their vows, and that, with penitents of this kind, those

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established in the sacred Orders, even in regular communities, may grant dispensations concerning hidden irregularities pertaining to the exercise of those Orders, and concerning the imposition of penalties by superiors, solely for the violation of censures, with the same authority, and with the amplitude of Apostolic benevolence, We grant and concede. However, We do not intend, by these present decrees, to grant dispensations concerning any other irregularity, whether public or hidden, or concerning any defect or mark, or any other incapacity, or any disability whatsoever, nor to grant any faculty concerning the aforementioned dispensations, or concerning the restoration to the former state, even in foro conscientiae; nor do We intend to derogate from the Constitution, with appropriate declarations, published by the blessed memory of Benedict XIV, Our Predecessor, beginning with the Sacrament of Penance, dated the Kalends of June in the year of the Incarnation of the Lord 1741, in the first year of his pontificate. Furthermore, those who have been declared, by Us and the Apostolic See, or by any Prelate, or ecclesiastical judge, to have been excommunicated, suspended, interdicted, or subjected to other sentences and censures, or publicly denounced, shall, unless they satisfy within the aforementioned time period and agree with the parties, where necessary, in no way be permitted to vote, or be obligated to do so. However, if anyone, after the beginning of this Jubilee, intending to fulfill the aforementioned works, should be prevented by death from completing the prescribed number of visitations, We, desiring to favor with benignity the pious and prompt will of such individuals, wish that those who are truly penitent, and have confessed, and have received the Holy Communion, may participate in the aforementioned Indulgences and remissions, as if they had visited the aforementioned churches on the designated days.

[*Latin ed. p. 188*]

188. With these prescriptions, the very visit itself should be undertaken. However, if anyone, after having obtained, through the force of the present document, absolution from censures, or the commutation of vows, or the aforementioned dispensations, should change their serious and sincere intention, previously required for the benefit of the Jubilee, and therefore alter the necessary works required for that benefit, they can scarcely be considered free from the guilt of sin; nevertheless, we decree and declare that such absolutions, commutations, and dispensations, obtained from them with the aforementioned provisions, shall remain in full force. Furthermore, we declare that these present letters shall be valid and effective everywhere, and shall produce their full effect wherever they have been publicly promulgated and put into effect by the local Ordinaries, and we most earnestly desire and decree that all the Christian faithful who reside in such places, or who may subsequently arrive there by navigation or travel, shall fully participate in them, provided that they remain in the

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grace and obedience of the Apostolic See: notwithstanding any constitutions, ordinances, and general or special reservations of indulgences, or relaxations, or dispensations, issued by the Holy See, in universal, provincial, and synodal councils, nor any statutes, laws, customs, and usages, or privileges, indulgences, or Apostolic letters granted to any religious orders, congregations, or institutions, even those confirmed by Apostolic sanction or any other form of validation, especially in those in which it is expressly stipulated that professors of such orders, congregations, and institutions are prohibited from confessing their sins outside of their own religious community. To all and each of these, even if a sufficient derogation from them and from all their contents is not to be made in a special, specific, explicit, and individual manner.

[*Latin ed. p. 189*]

ENCYCLICAL LETTER

Or, if another more suitable form were to be employed to achieve this end, such provisions for insertions, and such forms for the most accurate preservation, shall have force for this occasion alone, and to the fullest extent derogating from the foregoing, and from all other contrary provisions whatsoever. But, while, for the sake of the apostolic office which we exercise, and with that solicitude with which we ought to embrace the entire flock of Christ, we offer this salutary opportunity for obtaining remission and grace, we cannot but earnestly beseech and implore, through the name of our Lord and of all the pastors, the Chief Shepherd, Jesus Christ, all Patriarchs, Primates, Archbishops, Bishops, other Ordinaries of places, Prelates, or the local ordinary legitimately exercising jurisdiction in the absence of Bishops and Prelates of this kind, who enjoy the grace and communion of the Apostolic See, that they may announce only good to the people entrusted to their care, and that with the utmost diligence they may strive that all the faithful, reconciled to God through penance, may turn the grace of the Jubilee to the advantage and benefit of their souls. Therefore, it will be your primary concern, Venerable Brothers, first of all to implore Divine Clemency through public prayers, that it may illuminate and fill with grace the minds and hearts of all, that the Christian people may be guided by suitable instruction and admonition to understand the fruit of the Jubilee, and that they may accurately understand what is the purpose and nature of the Christian Jubilee for the benefit and advantage of souls, in which spiritual manner those good things are most abundantly accomplished, which the ancient law had foretold would be brought about every fiftieth year among the Jewish people; and that, at the same time, the power of indulgences, and all those things which must be performed for the fruitful confession of sins and for the holy reception of the Sacrament of the Eucharist, may be suitably taught. For truly, not only an example, but

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the entire work of the ecclesiastical ministry is required, that the desired fruit of sanctification may be borne in the people of God.

[*Latin ed. p. 190*]

190 ENCYCLICAL LETTER: To your zealous priests, Most Reverend Fathers: Do not fail to kindle the ardor of your priests to diligently exercise the ministry of salvation, especially in this time; and it will greatly contribute to the common good, if you yourselves, leading the Christian people by example of piety and religion, renew the spirit of their holy vocation through spiritual exercises, so that they may then, in fulfilling their duties and in carrying out sacred missions among the people, act with the order and reason established by you. Moreover, since there are so many evils prevalent in this age, and so many goods to be promoted, taking up the sword of the Spirit, which is the word of God, devote all your care to ensuring that your people are led to detest the heinous crime of blasphemy, by which nothing is considered too sacred to be violated in this time, and that they may know and fulfill their duties concerning the holy observance of feast days, and the laws of fasting and abstinence prescribed by the Church of God, so that they may avoid the punishments that the contempt of these things has brought upon the lands. Likewise, constantly encourage your zeal and effort in maintaining the discipline of the clergy, in diligently caring for the proper formation of the clergy, and offer every possible assistance to the afflicted youth, whose plight and the grave danger in which they are placed are not unknown to you. This evil has been so bitter to the Heart of the Divine Redeemer Himself, that He spoke these words to its authors: "And whosoever shall scandalize one of these little ones that believe in me: it were better for him that a millstone were hanged about his neck and he were cast into the sea" (1). However, nothing is more fitting for the time of the Sacred Jubilee than that works of universal charity be exercised more abundantly; and therefore, your zeal as well, Venerable Fathers, will add encouragement, so that the poor may be assisted, and that sins may be redeemed by almsgiving, of which so many good things are written in the sacred Scriptures (1).

(1) Marcus 9:41.

[*Latin ed. p. 191*]

ENCYCLICAL LETTER 191 are enumerated: and so that the fruits of charity may endure more widely and become more stable, it will be very fitting that charitable assistance be contributed to those pious institutions which are considered to contribute most to the benefit of souls and bodies at this time, in order to foster or encourage them. If all of you agree in your minds and endeavors to achieve these good things, it cannot be doubted that the Kingdom of Christ and its justice will experience great growth, and that at this opportune time, these days of salvation, the Most High

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will pour forth a great abundance of heavenly gifts upon the sons of His love. Finally, to you, sons of the Catholic Church, we direct our words, and we exhort all of you, with paternal affection, to make use of this opportunity for obtaining indulgences, as your sincere concern for your salvation demands. If ever it is necessary, now certainly it is. Beloved sons, cleanse your consciences from dead works, offer sacrifices of justice, produce fruits worthy of repentance, and sow in tears, so that with joy we may reap. Divine Majesty sufficiently indicates what it requires from us, when for a long time, because of our wickedness, we labor under its rebukes, under the inspiration of its wrath. Indeed, men often suffer, alas, whenever we, in our need, assign to God a more difficult task than is fitting, when we seek to help the nations; let us implore His aid, let us offer ourselves to Him with our hearts, with prayers, fasts, and almsgiving. For the closer we are to God, the further our adversaries are from us (1). But you, especially, hear the Apostolic voice, for you are engaged in the service of Christ, you who labor and are burdened, and who, straying from the path of salvation, are urged on by the yoke of wicked desires and the tyranny of the devil. Do not (1) St. Maximus of Turin, Hom. XC I.

[*Latin ed. p. 192*]

192. To you, who despise the goodness, patience, and long-suffering of God; and while so ample, so easily attainable opportunity for forgiveness is prepared for you, do not make yourselves inexcusable before the Divine Judge, and do not hoard up wrath for the day of wrath and the revelation of the just judgment of God. Therefore, you transgressors, return to your senses, be reconciled to God; for the world passes away, and its desires; cast aside the works of darkness, put on the armor of light, cease to be enemies to your own souls, that you may finally attain peace in this world, and in the other, the eternal rewards of the just. These are Our wishes: We shall not cease to implore these things from the Most Clement Lord, and we confidently expect that all the children of the Catholic Church, united with us in this prayer, will abundantly receive these very blessings from the Father of Mercies. May the Apostolic Blessing, which is the hope for the happy and salutary fruit of this holy work, be bestowed upon all of you, Venerable Brothers, and upon you, beloved sons, all those who are esteemed in the Catholic Church, which We impart from the depths of our heart, with fervent love in the Lord. Given in Rome, at St. Peter's, on the twenty-fourth day of December, in the year 1874, in the first year of Our Pontificate.

PIUS PP. IX.

[*Latin ed. p. 193*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF TRENT,

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DIVISION FOR PAROCHIAL MATTERS, December 20, 1873.

In the parochial church of Saints Stephen and Andrew in the city of V., in the Diocese of S., it was customary that if the parish priest relinquished his benefice, or died before the fruits of the land were separated, these were received by his successor, so that nothing reached either the predecessor or his heirs; but if the parish priest relinquished his benefice or died after the fruits had already been collected, then the fruits went to the predecessor and his heirs, and the new rector gained nothing from them.

The current parish priest presented this custom, which seemed contrary to natural law, to the Supreme Pontiff, imploring that, from then on, the revenues of the parish be distributed in proportion to the service rendered.

After these petitions were received, on November 22, 1872, the Bishop was consulted for information and his opinion; and the Bishop favored the parish priest, believing that the fruits should be divided in proportion to the service rendered, fixing the year for the beneficiary from July 1st to June 30th of each year.

After everything had been completed, the case, having been proposed and discussed, was presented before the Holy Congregation of the Council, under two aspects: namely, regarding the custom in force in that parish, and regarding the method of dividing the fruits, so that the aforementioned custom appeared to be one that should be abolished.

Regarding this custom, the following was observed: It appears that it can be maintained. For Benedict XIV, in his Synodical Decrees, in the book *De Synodis Dioecesibus*, book 12, chapter 8, number 8, states that two things are required for any custom to be maintained: 1. that it be reasonable; 2. that it be legitimately prescribed; and both of these conditions appear to be present in our custom: for the first is present, since it does not oppose either natural or divine law; and also, as is stated in the Acts, volume VIII, page 13, lines 18-20.

[*Latin ed. p. 194*]

§ 94. Divisions [of parish revenues] do not cause injury to men, nor to God, nor to religion, and should be established with the consent of those who have an interest in the matter; furthermore, they should not present any occasion for scandal or sin, since such a custom is entirely or freely subject to the will of men, according to which the loss of the parish may occur through death or resignation, in which cases no sin can arise. What is legitimately prescribed is evident from the fact that, according to those who treat of the Sacred Canons, a period of ten years is required for a custom to be legitimately prescribed, and at most, a period of forty years. Reinfestuel, lib. 1, Decretal, tit. 4, cap. "De consuetud," n. 102. (1) However, our custom is called ancient, indeed, venerable, by the Bishop himself, for which reason it should be considered as legitimately prescribed. But it has

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been observed that a custom of this kind is most contrary to justice and equity; for it offers nothing to the beneficiary who has labored for some time in the Lord's vineyard, but who, before the fruits have matured and been gathered, either dies or resigns the benefice (2); he is not worthy (1) A period of 40 years is sufficient to prescribe even a custom introduced contrary to the law (although not contrary to natural and divine law), but which has been prohibited by the prince through a general edict; however, in such a case, at least a colored title is required; without a title, a truly memorable period is required, that is, a period about which there is no memory. Cf. Synopsis Puhingiana, lib. 1, tit. IV, "De consuetudine," p. 6, page 43. (2) However, speaking in general and speculatively: in practice, everyone can renounce their own right; as a matter of fact, all former pastors have done so, and they cannot be said to have violated justice or equity. These pastors entered into the possession of the parish while this custom was in force, a custom which they knew very well, and which they themselves could not abolish. Furthermore, that custom was a kind of game of chance: profit, whether willing or unwilling, either happened to me, or to another. But in practice: in general and speculatively speaking, that custom could be unjust and from another point of view; it could happen that someone, after the fruits had matured and been gathered, entered the parish and had to bear all the expenses and burdens, both for cultivating the fields, and for restoring the houses and the Church, etc., receiving nothing that year; and then, before the fruits matured and were gathered, he died; and a new pastor, who had not spent a single penny, would inherit everything; which would be most unjust. Furthermore, there are not lacking Doctors who defend this custom, as has also been observed in the course of the cause: therefore, it should not be said to be contrary to natural law, but rather that the custom of dividing the fruits in proportion to the service is in conformity with natural law.

[*Latin ed. p. 195*]

The parish priest is a worker deserving of his wages; every laborer expects a reward. But these principles of natural law are completely overturned by this custom; hence, it ought rather to be called a corruption than a custom, and it seems to offer the greatest opportunity for sin. How could the heirs of a deceased parish priest, in peace, bear the loss of so much labor and expense? Would not this lead to discord, lawsuits, and blasphemies? Therefore, this custom cannot be accommodated by the law, namely, the long-standing custom. The use and longevity of a custom is indeed an authority of no small value, but not to such an extent that it should overcome reason or the law. The aforementioned custom demonstrates that it overcomes both reason and the law; therefore, it must be entirely abolished. But if a custom of this kind is to be removed, how will the proceeds be divided thereafter? In order not to fall into error in this

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difficult question, it must be noted that proceeds can be considered in four ways: civil, natural, industrial, and mixed. Civil proceeds refer to things such as rents from houses, salaries, and the prices of goods sold, which are not properly proceeds, but are considered as such in civil law. Natural proceeds are those that the thing itself produces from its nature, spontaneously, with little or no human labor, such as the offspring of animals, or the grass of the fields. Industrial proceeds are those that are produced solely by human industry, and in no way by the nature of the thing itself, although nature may cooperate as an instrument of the human industry or business being carried out; mixed proceeds are those in which both the nature of the thing and the industry of man cooperate, such as crops, oil, and cheese. With regard to civil proceeds, reference is made to what Cardinal de Luca teaches in *Disputationes*, 84, no. 4, on Benefices, where he says: "Since these proceeds are said to mature and be received by the ministry of the law, day by day, and even by hours and moments, therefore, between the predecessor and the successor, there is no division in the rules of arithmetic according to the proportion of time, as is the case with those things that are established by law, and which confirm the division to be made between a man and his wife, or..."

[*Latin ed. p. 196*]

§ 96. The fruits of the benefice, whether those accrued in the last year, or those separated from the principal, or those pertaining to the marriage portion, are to be settled, either entirely or in part. It is, however, properly understood that this applies in the case of the extinction of the benefice by death, or by necessary resignation; for in a simple and voluntary resignation of the benefice, the resigning party is presumed to have relinquished the fruits thereof, unless a reservation precedes. Natural fruits, simply, and industrial or mixed fruits, are either separated from the land or are dependent upon it; if they are separated from the land, even if not yet gathered into the barn, the Doctors dispute to whom they belong; for some hold that they pertain to the heirs of the beneficiary, while others hold that they pertain to the successor of the benefice. Cf. Thomas de Rosa, cap. 7, *de recta distributione reddituum Ecclesiasticorum*, n. 36 and following, where the reasons for both opinions are accurately explained, and Doctors are cited who argue for one or the other. The Doctors teach that fruits which are dependent upon the land are either to be expended for the benefit of the Church, or to be reserved for the future successor, because dependent fruits appear to be a part of the land, and therefore, until they have been gathered, or separated from the land, they pertain to the Church, or to the successor in the benefice who gathers them. Leg. *Si usufructuarius*, § concerning the ways in which usufruct is lost, and § *is vero Instit. de rerum divisione*, where it is written: "But he to whom the usufruct of the land pertains, is not considered the owner of the fruits, except if he himself receives them." And

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therefore, if the mature fruits, though not yet received, pass away [with the deceased], they do not pertain to his heirs, but are acquired by the lord of the property. To this is added the Constitution of Julius III, beginning: "Since, as has been confirmed by Urban VIII in his Constitution, *Aeternus rerum conditor*, it is expressly stated that the fruits of benefices, not yet received at the time of the Beneficiary's death, pertain to the successors in the benefice, and are not to be paid to the Most Reverend Apostolic Chamber" (1). (1) Because of the disputes concerning the fruits separated from the land but not yet gathered into the barn, it was at least doubtful to whom they belonged, whether to the heirs or to the deceased; for this reason, a custom was introduced from all parts which did not contradict the law. Concerning dependent fruits, nothing was changed by that custom.

[*Latin ed. p. 197*]

REGARDING PAROCHIAL REVENUES 197. Whatever may be the opinion regarding the aforementioned points, another opinion pleased the Doctors more, which holds that all the fruits should be divided in proportion to the service rendered and the burdens borne. For the fruits of a benefice are a portion assigned annually by the Church to the beneficiary, for his proper support and for the bearing of burdens; therefore, according to the proportion of both the service rendered and the burdens borne, they are justly distributed equally. Concerning this matter, see the Council of Trent, Session 22, Decree on the Reform of the Church, Chapter 8. "A church benefice is, in effect, a certain heavenly service in the service of God for the ministry." Therefore, because "he who serves at the altar ought to live from the altar," and because those who are destined for this purpose are assigned the fruits of the benefice, as expressed in Canon 6, Decree 12, the Doctors conclude that the fruits of the benefice, even if collected entirely by the deceased Rector in the month of October, should be divided in proportion with the beneficiary, so that he too may live comfortably from those fruits, after examining the revenues of the benefice up to the new collection; for, as I have said, the fruits of the benefice are due for personal service and for proper sustenance of the person serving, and for this purpose they are assigned. As elegantly declared by Albericus in the leges, Divorce, ff. solut. matrim., under number 12, arguing, and rightly, from the fruits of the dowry of goods to the fruits of benefices, for both are due for the sustenance of the wife, according to L. Pro oneribus, C. de Iur. Dot. and 1. assiduis C. qui potiores etc. Didacus Oovarruvias followed this in book 1, chapter 15, under number 12. Also, Vinius, Decision 8, number 12; Ludovicus Molina de maiorat, Hispan, book 3, chapter 9, number 4; Gabriel, Council 191, number 6, letter N. And this distinction is most equitable, indeed necessary; for it is clearly evident that a deceased beneficiary does not dispose of all the fruits of that year for the benefit of his heirs, but only in proportion to the time he served after the new fruits, and with the resolution that has

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newly passed, as John de Castillo states in the Tractat, de usufr., chapter 77, number 29, after Fabrum and Barbosa. It cannot be said that this opinion lacks foundation in the Holy Canons. See, for example, Clericatum, Volume 1, Discord.

[*Latin ed. p. 198*]

DIVISION III, Question 6. There, it is manifest in the Decree of the Holy Council, Canon 12, where it is said that goods are entrusted to the Churches by the faithful, so that their ministers may live from the revenues of those goods. This is repeated in Chapter 12 of the same collection, under the text cited there. The Law of God commands that those who serve at the altar be supported by it. Furthermore, among the Decretals, there is a decree of Boniface VIII in the final chapter, paragraph. Moreover, in *De Officiis Ordinum*, it is decreed in this manner. Furthermore, where someone asserts, by privilege, or custom, or for some other reasonable cause, that certain goods belong to him, this should be understood only of those goods which, after debts have been paid, and of those which have been necessary for the support of the servants and ministers and for the burdens incumbent upon them, up to the point of supporting new revenues, have been found to remain. By this canon, it is clearly indicated that where the fruits of a benefice are said to belong to the heirs of the deceased beneficiary, from whom they were collected, the heirs themselves are bound to give to the successor of the beneficiary a suitable portion of those same fruits, which will suffice until new revenues are obtained for the support of the successor, as Geminianus and Francus rightly declare in their commentary, paragraph. And this same thing is again established in the Extravagantes *Suscepti Regiminis* 2, concerning Eiectiones, and in *Gier. Potest.*, in which the Supreme Pontiff John XXII, referring to abuses in various Churches, in which all the fruits of vacant benefices were applied either to the fabric or to the heirs of the deceased, so that the successor in the benefice had nothing for his support, and was thus forced to abandon the service of the Church for that year, commands that, from then on, only a certain sum be given to the fabric or to the heirs of the deceased, and that the remainder of the fruits should belong to the successor in the benefice; and he decreed that this should be observed, notwithstanding any privileges or indulgences, or contrary customs and statutes, by oath, confirmation of the Apostolic See, or any other means of validity; all of which, with regard to this matter, the Apostolic authority revokes, and He wished to be of no further force.

[*Latin ed. p. 199*]

Therefore, in this extravagant decision, the matter is settled, since we have there the explicit determination of the Supreme Pontiff, that the last year's fruits, at least for half, be given to the successor, so that he may establish his residence, dedicate himself to divine offices, and serve the

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Church.

Indeed, Barbato confirms this rule in *De Divis. Fruct.*, Part 2, Chapter 8, saying: "The fruits are to be divided among the heirs of the deceased beneficiary in proportion to the time [of their inheritance], whether it concerns pending fruits or existing ones, or even those received as fruits of a dowry, which are divided in proportion to the time between the husband and wife, or their heirs." Furthermore, ecclesiastical fruits have been destined for this purpose, that from them the expenses for the entire year may be sustained, until new ones are obtained; therefore, it is reasonable that they be divided in proportion to the time of service, considering equity.

The Cardinal of Lucca does not dissent from these Doctors, who in *Disceptationes*, number 40, after saying that dowry fruits are to be divided in proportion to the time between the man and the woman, or the heirs of either, "without any distinction between natural and industrial or civil [ones], because the fruits are owed as compensation for the burdens of marriage which [the spouse] has supported; therefore, for each day and hour in which [the spouse] has supported these burdens, all fruits, whatever their quality, are due; concerning ecclesiastical goods, he adds: From this reasoning, the same [principle] is established contrary to the general rules in benefices with a cure of souls, or other positions requiring personal service, with respect to their fruits, which are given as a reward or compensation for the burden and service; although in places where the spoils go to the benefit of the Camera, this is not easily observed."

Indeed, does not the successor to the benefice also bear the burdens of the benefice, among which, according to the mind of the Church, the honest support of the Rector is included? Does not the successor to the benefice also pay pensions, if they are due, and taxes to the government, and all expenses? Why, therefore, should not a fair division of fruits be made among the heirs of the deceased beneficiary?

Panimolle writes to the point in *Decisiones*, 20, Annotation 1, number 42.

[*Latin ed. p. 200*]

200. DIVISION. "If a cleric dies having received, concealed, and mixed with all the fruits of his benefice, to such an extent that his successor finds no fruits with which to support himself, the predecessor, or his heir, is bound to supply all expenses for the existing burdens and to provide for the successor until new revenues, because the revenues of the benefice for one year are destined for these burdens until the subsequent year's revenues arrive." Castillo, in his work on usury, chapter 77, paragraph 29, follows this reasoning. After expounding the various opinions of authors on this matter, he says: "It seems more just and truly in accordance with the law that the fruits of the year in which the beneficiary dies should belong, without distinction, in proportion to the time, to the heir of the

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deceased." After explaining the fundamental reasons for his opinion, and defending it against opposing arguments, he concludes: "Since the fruits of the lands and properties of the ecclesiastical benefice, and the revenues constituted and designated by the canons for the support of the cleric holding the benefice, and are given to him for the ministry which he offers to the Church in its governance, it is not just that a solution should be made in any other way, or without considering the aforementioned, nor that the fruits should not be given to him in full proportion to the time served, as reason itself, the institution of services, and the entire matter demand. Therefore, we believe that the aforementioned opinion, that the fruits should be divided in proportion, should be observed, and we have often seen it observed, and we do not find any judgment contrary to it to be just or in accordance with reason." Finally, it is observed that the Holy Congregation of the Council followed this rule in Segni, in the Constitutions, on January 24, 1829. When consulted whether the Capitular Constitution of the Collegiate Church of Montfort in the Diocese of Segni should be confirmed, which stipulated that the division of fruits should be made in proportion to the service, after mature discussion, the response was: "Affirmatively, with the following reasons for this decree: 'It seems to us to be worthy of consideration, indeed deserving of approval, the particular Constitution of the Chapter of Montfort.'"

[*Latin ed. p. 201*]

The following is a decree of the Sacred Congregation, dated July 20, 1837, confirmed by the Bishop during the sacred visitation. It is primarily concerned with resolving disputes that often arise between the heir of a deceased person and the successor to a canonry, and with preventing such disputes. Furthermore, it is consonant with both equity and justice that, when someone has borne the burdens of a benefice, they should also enjoy the benefits of that same benefice. Although one should adhere to the prescriptions that apply to usufructuaries, it seems otherwise when dealing with those who possess simple benefices, who are compared to usufructuaries without burdens. However, it is different for those who hold benefices with the care of souls, the administration, or residence attached to the office; and finally, if these fruits are considered the reward for burdens and the compensation for labor. Therefore, some prelates in the dioceses have decreed that the division of fruits should be made accurately, according to the number of days that each person has served the Church.

After careful consideration, the Holy Congregation responded to two doubtful propositions:

I. "Whether the custom of dividing the fruits of benefices should be maintained in this case."

II. "Whether and how such fruits should be divided in this case."

To I: "It does not seem appropriate in this case."

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To II: "All the fruits of the benefice in question, from June 30th to July 1st of the following year, after deducting the expenses, are to be divided in proportion to the time that each person held the benefice, according to the words of the Most Holy."

FROM WHICH WE GATHER THE FOLLOWING:

I. The Church, whether through particular contracts or customs, may, provided they do not contradict established rights, sometimes tolerate and permit; however, it is desirable that due consideration be given to the labors and burdens that each person has borne.

II. Because the rights pertaining to the benefice are due to the office, the worker deserves his reward. He who serves at the altar...

[*Latin ed. p. 202*]

202. REGARDING THE DIVISION OF PAROCHIAL INCOME: The income from the altar must be used for its intended purpose; the fruits of the benefice are to be divided equally among those who hold the benefice in the same year, and who bear its burdens. III. Contrary customs, which contradict this equitable division of fruits in proportion to service and burdens, must be eliminated.

REGARDING THE ADMINISTRATION OF SACRAMENTS AND THE FEES FOR FUNERALS. On March 24, 1873, a summary was compiled. In the year 1834, when A. F., Bishop of C., had paid his debt to nature and had chosen burial in the chapel of the episcopal seminary, the parish priest of St. Andrew's claimed the fees for the funeral, because the episcopal palace was located within the boundaries of his parish; on the other hand, the chapter asserted that these funeral fees belonged to it. For this reason, in the year 1861, the parish priest summoned the chapter to court before the metropolitan curia, before which the chapter refused to appear, alleging the incompetence of the forum. Hence, the parish priest appealed to the episcopal tribunal. But since, in the meantime, the Bishop had died, and the chapter had brought the matter before the Sacred Congregation of the Council, proposing two questions, the Sacred Congregation of the Council heard the case and, on February 19, 1872, issued a decree: "To the capitular vicar, for information and opinion, after having heard especially the chapter and the parish priest separately, he should report on the rightful ownership of the oratory, transmitting a copy of the agreement of the year 1787, and other matters relevant to the case."

[*Latin ed. p. 203*]

ADMINISTRATION OF THE SACRAMENTS AND THE FUNERAL RITES OF THE DECEASED 203. The Vicar Capitular, on March 18, 1872, responded that, having heard the arguments, the Chapter did not

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wish to pursue the dispute, and therefore humbly requested that, with all contention removed, the matter be concluded by the authority of the Sacred Congregation of the Council; and that the Parish Priest be summoned to the Metropolitan. Meanwhile, a new Bishop was appointed, who also heard the arguments and transmitted a favorable opinion to the Chapter to the Sacred Congregation. Consequently, the parties were informed that their case would be debated in the full sessions of the Sacred Congregation of the Council, and that if they wished to pursue their rights further, they must do so within a specified time. After everything was completed, the case was debated on May 24, 1873. The following is what was stated and presented on behalf of the Parish Priest: 1. His right was established and protected, from which it is clear that the Parish Church of Saint Andrew was already a parish church before the Chapter was attached to it, and that nothing has changed as a result of such attachment. 2. From the very agreement entered into between the Chapter and the Parish Priest on September 4, 1787; in which, under § 10, the following is stated: "After the union (that is, with the Parish Church of Saint Andrew) has been completed, the Venerable Chapter will perform its offices in the Church of Saint Andrew, or, while the church is being repaired, it will perform them together with the clergy of Saint Andrew in the Church of Saint Francis. The Venerable Chapter grants the Parish Priest the free exercise of his parochial rights." But who, in canon law, is considered a guest who does not know that among the rights of the Parish Priest, the most important are the administration of the sacraments to the sick and the burial of the dead? 3. Furthermore, the Parish Priest's jurisdiction has no limits other than those of the parish itself, as Scarfantoni writes in *Ceccoperium*, p. 2, decision 60, no. 2, stating: "The Parish Priest has a well-founded intention and the support of common law to exercise his jurisdiction throughout the entire territory of his parish; and that the Sacred Congregation of the Council itself has defined that he can exercise it indiscriminately over all the faithful who reside in that parish, as stated in *Forolivien*, regarding the jurisdiction of funerals, on September 16, 1871, in these words: 'The jurisdiction of the Parish Priest extends to the entire territory of the parish, and it is exercised indiscriminately over all the faithful who reside therein.'"

[*Latin ed. p. 204*]

204. The administration of the sacraments pertains to either the laity, or to ecclesiastics. To this, the Decrees of Amiens, Chapter 8, No. 16, agree, stating that it belongs to the parish priest to administer the sacraments to all the faithful who reside in his parish, and to bury them. It is the right of the parish church to bury any deceased person found within its boundaries; furthermore, the Rota Romana, in the decree on burials of February 20, 1702, presented before the Prior, as reported by Piton in the Disputations

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Ecclesiastical, 51, No. 19, states that it is undoubtedly the rule that all the faithful who die within the boundaries of a parish church should be buried in that same church. This was also defined by the Sacred Congregation of the Council in Camerino, concerning burials, on November 20, 1819. This ecclesiastical rule has such force that it seems to include even the Bishop. Therefore, Simuel, in his Disputations on burials, 5, controversy 11, council 16, says: "If prelates die within the diocese, they are subject to the same rules; the best course is if they die in another parish, so that it appears that they have chosen that place, unless they have expressed otherwise." Furthermore, even if the question cannot be settled by law, it is certain, from the aforementioned agreement, that the emoluments of funerals belong to the parish priest; for in Article VI, it is stated: "All emoluments, whether certain or uncertain, arising from the deceased, from obsequies, funerals, anniversaries, and from any other source, are reserved to the parish priest and his successors, as they were before the Roman Chapter was attached to the Church of Saint Andrew. This is repeated in other places in the same agreement. And no other meaning has been given to these words, nor has a different interpretation been given by those who originally drew up this agreement. Indeed, in the life of the Most Reverend [Bishop], during which the aforementioned agreement was celebrated, the emoluments of funerals were given to the parish priest; and although the Chapter presumed to claim them for itself, nothing was granted to it except one-fourth, which was devoted to the sacristy of the Cathedral, and another fourth to the sacristy of Saint Andrew, solely through the generosity of the parish priest; as is evident from the testimony of the sacristan, D. P., who extracted this document from the aforementioned register of the dead.

[*Latin ed. p. 205*]

AND OF THE BENEFITS DERIVED FROM FUNERALS 2G5 It has been thoroughly investigated that, in subsequent times, the Parish Priest has always received, without any objection, the benefits arising from the funerals of Bishops. And it is considered that custom is the best interpreter of the law. Furthermore, the Chapter itself, albeit belatedly, has recognized the right of the Parish Priest. Indeed, when Bishop F. died in the year 1872, there was no dispute with the Parish Priest regarding the benefits of the funeral; on the contrary, when he wished to perform the funeral office and the exequies for the Bishop, he requested permission from the Parish Priest, who graciously granted it, but with the condition that no right of the Chapter would arise from this concession, nor would it be done in any way to the prejudice of the Parish Priest's jurisdiction. Therefore, whether one considers the law, the agreement entered into, the custom, or the manner in which the Chapter acts, it seems that the judgment should favor the Parish Priest. These matters have been disputed on behalf of the Chapter. However, these arguments were refuted by the defender of the Chapter

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with much stronger reasoning. He observed that 1. it is well known in law that Bishops and Archbishops are not included in general provisions, but require special mention in order to be subject to them; as decreed by the Rota in the cited decision, number 90, in the section on adoptions, number 248, and 49. It would be incongruous for the Parish Priest, the Parish Priest of the entire Diocese, which is the Bishop, to be subject to the same rights as ordinary parishioners, and for him who communicates jurisdiction to others to be dependent on those to whom jurisdiction is granted. Furthermore, the laws have been enacted for the best interests of the honor of the Bishops. Indeed, the *Caeremoniale Episcoporum* sets forth everything concerning the administration of the Sacraments to ailing Bishops, and concerning the funeral rites to be performed for them when they have passed away. Regarding the Holy Eucharist, chapter 38, section 3, and following, it states: When a Bishop, knowing that his final hour is approaching, first confesses his sins diligently to a confessor, then, at a suitable time, he requests the Holy Eucharist... then, with greater devotion and humility than possible, he receives the Holy Eucharist, which is brought to him by the highest dignitaries, accompanied by the Chapter, and the entire clergy of the Cathedral Church in ecclesiastical vestments, and with...

[*Latin ed. p. 206*]

206. THE ADMINISTRATION OF SACRAMENTS TO A DYING BISHOP. These words are understood by the Catalans in their commentaries on the *Caeremoniale Episcoporum*. It is generally agreed by learned men, as cited by Scarfantoni in *Ceccoperium*, p. 3, addition 7, that the first duty is to administer the Sacraments to a dying Bishop, and after his death, to celebrate the funeral rites, in accordance with the rubrics of our *Caeremoniale*. Scarfantoni also notes that this applies even if a Canon is present in the Cathedral church, exercising pastoral care, and who is accustomed to administering the Sacraments to Canons in their own homes, because, of course, this does not apply with respect to the Bishop, even though he is the Head of the Chapter and constitutes a single body with it. However, Scarfantoni also notes that one cannot support a contrary custom, given the clause in the *Caeremoniale* which invalidates contrary customs. Therefore, it is clear from the *Caeremoniale Episcoporum* that it does not pertain to the Parish Priest to bring the Eucharist to a sick Bishop, nor to anoint him with Extreme Unction. The *Caeremoniale*, in the aforementioned passage, § 4, continues: ”After receiving the viaticum, the Bishop should then instruct the Sacristan or curate to administer the Sacrament of Extreme Unction to him when the time comes.” These words are cited by the Catalans in the same place. What is said here about the Sacristan is clearly taken from the *Caeremoniale Papae*, by Patrick, where, speaking of the Pope’s illness, it is explicitly stated that the Sacristan should administer Extreme Unction and commend the soul to

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God at the appropriate time. I believe that, although it is the proper duty of the Curate to administer Extreme Unction to the dying, since both the Sacristan and the Curate are mentioned, and indeed disjunctively, in our §, it follows that it is within the Bishop's discretion to receive Extreme Unction from either one. This freedom of choice applies to the Bishop also with regard to the commending of his soul. The Bishop should instruct the Sacristan or the Curate to commend his soul to God when the time comes. Ibid., § 4. Moreover, even in the final moments, the Parish Priest has no right to be present with the Bishop; but pious and religious men continuously attend the dying Bishop, to whom the Cross is shown, and who is kissed.

[*Latin ed. p. 207*]

And let the funeral rites and prayers be frequently offered. Nor are there wanting religious persons and priests who, continuously, while he still breathes, read the Psalms, the Passion of our Lord Jesus Christ, and other devout prayers. Ibid. § 7. The condition of such a funeral for a bishop does not change or become better after the bishop has exhaled his last breath; for the Ceremonial states: "After the bishop has surrendered his spirit to the Creator, the Canons who are present shall, one after another, recite the verse from the Inferi, etc., with the prayer 'O God, who among the ranks of the Apostles, etc.'" What, then, about the association of the body in which the Canons are first mentioned, and no mention is made of the parish priest? The body of the deceased bishop shall be placed upon a bier, and, preceding all the religious and the clergy in their order, shall be carried to the church. The Canons shall immediately precede the bier. After the body has arrived at the church, the first dignity of the Chapter performs its office and sings Mass... The aforementioned bier shall be placed in the middle of the church, and there the Prior, or the most senior Canon, or the first dignity if present, wearing a cope, shall perform the office, that is, he shall say the Our Father at the foot of the bier, lay his hand upon it, sprinkle it with holy water, and incense it, and finally, he shall sing the aforementioned verses and prayer. After this, Mass shall be sung for his soul... and the usual final prayers shall be said. These last words, "Mass shall be sung for his soul," indicate that the Chapter is to offer prayers for the deceased bishop, as Catalani teaches, that the most senior Canon, or the first dignity, is to perform the office for the deceased bishop and solemnly celebrate Mass. Therefore, from the Ceremonial of Bishops, it is clearly evident that it pertains to the Chapter, and not to the parish priest, to administer the sacraments, or to perform the funeral rites for the deceased bishop. The Ceremonial of Bishops has the authority to make laws, and this has been affirmed several times by the Rota, especially in the decrees concerning the thurification of March 16, 1626, and in the Primatus of Cagliari of June 14 and December 10, 1638, decrees 60 and 92. Furthermore, almost all Canonists agree with

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this, among whom, for the sake of honor, we mention Cardinal de Luca, book 3, page 2, on the subject of preeminences, section 29, paragraphs 9 and following. This agreement, begun between the parish priest and the Chapter,

[*Latin ed. p. 208*]

208. Regarding the administration of the Sacred Treasury, in no way should the Parish Priest be favored, nor should any right pertaining to the Bishop's funeral rites be granted to him; for it is written in article 1 of the Chapter that his immunities, exemptions, liberties, powers, jurisdictions, and privileges are all preserved, just as he previously possessed them; and in article 6 of the Chapter, all those anniversaries which he used to celebrate in the Church of St. Francis are preserved and confirmed, before he transferred to the Church of St. Andrew. However, it is clear that the Chapter had the right to administer the Sacraments to the Bishop who was infirm, and to perform his funeral rites. Therefore, no difficulty arises from the fact that it is stated in the same agreement that all the rights which the Parish Priest possessed before the union are reserved to him; because from the subject matter itself, it is clear that nothing new was granted at that time, and also from the appended clause "saving [these rights]," which, as a purely preservative clause, does not grant anything new. Furthermore, even if the Canons had wished to, they could not have relinquished the aforementioned rights; firstly, because the dispositions of the Ceremonial are intended to protect the dignity of the Bishops, and no privilege is granted to the Canons that would allow them to alienate the rights of others; secondly, because the dispositions of the Ceremonial have the force of universal law, from which only the supreme legislator can grant dispensations. See Pignatelli, volume 2, consultation 30, number 13. Sentences pronounced against the established custom by the Bishop are not to be heeded (much less are agreements of the Canons initiated against the established custom to be heeded). For just as the Constitution of Clement VIII for the observance of the Ceremonial abolished all contrary customs, so too, sentences, most of which are issued from carelessness or inexperience, are not to be heeded (1). This is so true that no prescription can be valid against the Ceremonial, as Pignatelli teaches in title 4, consultation 98, number 6. Custom is not an obstacle because it is irrational (1). The civil law also states: "That which is done contrary to the law is void from the beginning: General laws must be observed by all." L. Iubemus. Cod. de legibus. Also, see the Sacred Canons.

[*Latin ed. p. 209*]

And of funeral expenses, 209, and therefore, no prescription can be applied to it, and thus it is not barred, even if it were of ancient standing. For this does not arise from a matter of dignity, nor from a matter of office, but

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from an abuse which springs from the root of ambition. Furthermore, this controversy is not new, and has been decided in other cases by the Holy See. Indeed, in the *Faventina Praeeminentiarum et Funerum*, on June 7, 1760, in the eighth question, it was asked: "Does the Chapter, and its highest dignity, have the right to administer the Sacraments of Holy Eucharist and Extreme Unction to a sick Bishop, or rather, in what cases does this right belong to the Parish Priest?" The answer was: "The Ceremonial is to be observed." From the solution of this first question, or doubt, the solution of the other flows naturally. For if it pertains to the Canons of the Cathedral to administer the Sacraments to a sick Bishop, and to perform the office for him after his death, it is clearly established that the emoluments of the funeral belong to the Chapter, and not to the Parish Priest. For the right of the Parish Priest to administer to the funerals of the parishioners, and to collect funeral offerings, is granted to him as a compensation for his spiritual labor, according to the words: "Let them not demand temporal things from those to whom they do not minister spiritual things." Since, therefore, the Parish Priest has no right whatsoever to administer spiritual things to Bishops, whether living or dead; neither can he, nor should he, demand temporal things from them. For this reason, Ursino, in *Disceptationes Ecclesiasticae*, volume 5, disputation 2, number 59 and following, writes: "The emoluments of funerals are commensurate with the Sacraments, so that just as the Parish Priests, in life, were companions in the sufferings of the faithful by administering the Sacraments to them, so also in death they become sharers in the consolation, according to the words of the Apostle." This opinion has been affirmed not once, but repeatedly, by the Sacred Roman Rota. Having examined these matters, let us consider the proposed doubts: I. Does the Chapter, or the Parish Priest, have the right to administer the Sacraments to a sick Bishop, and to perform the funeral rites for him after his death, including celebrating a solemn Mass for his soul and performing the exequies, in this case? II. Do the emoluments of the funeral of a Bishop belong to the Chapter, or rather, are they to be given to the Parish Priest, in this case? Acts, Volume VI, Part III, pages XXVII.

[*Latin ed. p. 210*]

"CONCERNING THE ADMINISTRATION OF THE SACRAMENTS AND ECCLESIASTICAL BENEFITS." The Sacred Congregation responds: To 1. The *Caeremoniale Episcoporum* [Ceremonial of Bishops] must be observed, and so forth. To 2. Affirmative, with the favorable opinion of the Chapter. FROM WHICH THE FOLLOWING MAY BE GATHERED: 1. The rights pertaining to the administration of the Sacraments to the Bishop, whether he be infirm, or, upon his death, to perform the funeral rites, to say Mass and the Office, belong to the Canons, and not to the Parish Priest. 2. The Canons cannot renounce this right, since it is established in order to honor the dignity and honor of the Bishops, and also because it is a

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universal law from which dispensation cannot be granted except by the Supreme Pontiff. 3. The ecclesiastical benefits are to follow from the office; therefore, they pertain to those who have the right to perform the offices, and who have performed them. 4. The ceremonial statutes of the Bishops have the force of law, and must be observed by all.

[*Latin ed. p. 211*]

211. IMPEDIMENT TO MARRIAGE. July 2, 1873. Summary of the case. Joseph B., of the Diocese of V., had contracted betrothal with Vicentia T., of the same Diocese. After the third proclamation of marriage, a certain suitor of Vicentia, who desired that she marry him, presented letters to the Parish Priest, in which, not only were mutual affections and promises of a future marriage revealed, but, which was the most serious matter, he affirmed that Joseph had carnally known Antonina, Vicentia's mother. Upon receiving these letters, the Parish Priest first summoned Joseph, and explained to him what hindered him from entering into marriage, and requested that he renounce the marriage, or seek appropriate dispensation. But Joseph entirely denied that he had had relations with the bride's mother, and therefore maintained that he needed no dispensation. Then Vicentia, in writing, affirmed this, and declared that she did not wish to marry Joseph, and that she despised those nuptials; she also confessed that she had been forced by her mother to enter into those betrothals; moreover, she confessed that she had seen with her own eyes the carnal union of her mother with Joseph, the betrothed, and that she was ready to confirm this under oath, as far as it was necessary. Having heard this, the Parish Priest, although the triple proclamation had already been completed, considered that, in this case, it was necessary to prohibit the marriage, which he did. Joseph took this very badly; and, under the influence of wicked men, both he and the bride secretly (that is, without the Parish Priest) contracted marriage, and dedicated themselves to the procreation of children. This greatly displeased Vicentia's father; for this reason, she went to the Episcopal Curia of V. to request that the impediment to marriage be lifted. This led to an examination of witnesses, and on July 7, 1857, the Parish Priest's prohibition against contracting marriage was ratified, and confirmed by a judicial sentence.

[*Latin ed. p. 212*]

212. O, miseria humana! Iudicium Curiae Episcopalis: Sponsi, qui minime acquiescebant, appellaverunt ad Metropolitanum, qui sententiam Episcopalem confirmavit die 28 Ianuarii 1858, et hoc, praeterea, quod alium impedimentum a Tribunali Episcopi ad Metropolitanum deductum fuerat, scilicet primum gradum consanguinitatis, quasi Vicentia ex turpi commercio Iosephi, sponsi eius, cum matre sua habitore nata esset. Iosephus et Vicentia, sperantes in concubinatu turpissime perseverantes,

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plures liberos susceperunt, quorum legitimationem omnimodis procurabant, non excluso matrimonio mere civili. Episcopus, vero, eiusmodi scandalum e medio tollere cupiens, et rem componere, mense Februario anno 1871, supplicem libellum ad Romanum Pontificem porrexit, exorans ut dignaretur auferre duplex interdictum Curiae Episcopalis posita iudiciali sententia die 7 Iulii 1857, et Metropolitanum Curiae G. diei 30 Ianuarii 1858, ne contraheretur matrimonium Iosephi B. cum Vicentia T., et hoc, praeterea, ut sibi inculcatur daretur dispensandi ad cautelam a praedicto affinitatis impedimento, cum facultate etiam subdelegandi. Sacra Congregatio Concilii sub die 18 Martii decretum edidit: Eidem Episcopo, qui referat utrum Curia Episcopalis aliquid egerit pro separatione, praesertim post sententiam nullitatis ab eadem Curia prolatam. Episcopus, Sacrae Congregationis obtemperans, respondit, post prolatam sententiam nullitatis, maximopere ex parte Curiae adlaboratum fuisse ut separationi locus fieret; at frustra, tum ex quo sponsus domicilium mutaverat, tum ob supervenias politicas procellas. Accepto eiusmodi responso, Sacra Congregatio iterum sub die 22 Aprilis 1871, hoc alterum decretum edidit: Eidem Episcopo qui transmittat sententias et alia documenta ad rem facientia: inter quae curavit ut tum Iosephi tum Vicentiae nativitatis fides haberetur. Omnibus habitis, decretum editum fuit sub die 20 Aprilis 1873: Ponatur in folio, et notificetur Episcopo causam disceptandum esse in plenis Comitiis S. Congregationis; ideoque moneat partes, eisdem congruum praefigandi terminos.

[*Latin ed. p. 213*]

INHIBITIONIS. MATTER: It is inquired whether, to the extent that they wish, further rights can be asserted before the Holy Congregation, and whether the result will be certain. A concise discussion follows. After careful examination of the existing documents, it was determined whether the marriage of Joseph with Vicentia could have been lawfully celebrated before the Church, either due to one or the other of the aforementioned impediments: firstly, the degree of affinity arising from the supposed carnal union of Joseph with the mother of Vicentia, his bride; and secondly, the degree of consanguinity arising from the fact that Vicentia was said to have originated from such a most heinous union, so that in this case, the father would have taken his daughter as his wife (1). To eliminate the impediment of consanguinity, it was observed that: 1. Joseph had not yet reached his fifteenth year when the mother of Vicentia married A. on November 1st, 1838, and subsequently, having entered into marriage, she moved with her husband to their home in F., where Vicentia was born on July 4th, 1839 (2). These facts are attested to by the testimony of the parish priests and witnesses of good reputation. 2. According to the testimony of witnesses, the familiarity between the family of Vicentia and Joseph began when the parents of Vicentia, having returned to their homeland after choosing a

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new home abroad, selected a house near the home of Joseph, and at that time, Vicentia was already two years old, and she attended the elementary schools near Joseph's home.

(1) We omit mentioning observations regarding the immediate merits of the case; because, while they are supported by documents, which have been proven to be either false or doubtful on the other side of the discussion, they are presented in that part. (2) It is scarcely believable that a woman would have wished to have relations with a young boy while seeking other loves, and indeed, to induce the mother to marry, or that she would have abandoned the marital fidelity shortly after entering into marriage. Furthermore, this is contradicted by the change of residence. It does not present a difficulty that the mother gave birth to Vicentia before the completion of nine months; for there were 26 days remaining to complete the nine months, and this could have occurred due to some morbid cause; it could also have arisen from intercourse with her husband, or another, and even with Joseph; but how is this proven?

[*Latin ed. p. 214*]

214. The impediment to marriage was carefully managed. Consequently, the friendship between these two families began; therefore, it must be said that the suspected friendship of Joseph with Antonia of Antoing, the mother of Vicenza, also began at that time, since Vicenza was already in the womb; therefore, this girl was neither Joseph's daughter, nor could she be considered as such. 3. From the testimony of witnesses regarding certain knowledge of public events, and with an oath, the carnal relationship of Joseph with Antonia before the birth of Vicenza is to be excluded; for the witnesses, when asked whether Vicenza should be considered as Joseph's daughter, swore that he answered negatively, and that he was deeply convinced of the falsity of such an accusation; one said: "I have never heard of it, nor have I heard anyone else mention it, since such an accusation is completely unfounded"; another: "I am surprised by such a question, since this supposition cannot stand." 4. It is established that Joseph and Antonia were perpetually and completely free from any suspicion of a disgraceful relationship, not only before the birth of Vicenza, but also afterwards, that is, until the year 1857, when Vicenza joined Joseph (1). 5. No action was taken to spread rumors or cause scandal, as if it were true that the Father had taken his own daughter as a wife; for such scandals would have been quickly removed as soon as they were spread among the people by a judicial sentence, and there was no relationship whatsoever between Joseph and the mother of Vicenza; therefore, there was no need for a canonical purgation by oath. 6. Finally, both the Parish Priest and the Bishop confirmed this with words so clear that they leave absolutely no room for doubt; namely, that when Vicenza was conceived, Joseph had barely reached the age of puberty, and had no relationship with (1).

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Furthermore, this argument is very important if we consider that fathers generally refrain from contracting marriages with their own daughters; for this would require a diabolical concupiscence, and something even worse; and no one can say that Joseph could not have known this; for if there was a true and constant carnal relationship between him and the mother of Vicenza, she would not have failed to reveal to him that the girl born of his seed was his own daughter. Such revelations always and almost necessarily occur among people of this kind. And the mother, unless she was possessed by some demon, would have rejected those marriages and rebuked Joseph for considering them.

[*Latin ed. p. 215*]

CONCERNING THE IMPEDIMENT TO MARRIAGE 215, she had not had, nor could she have had at that time; that he had entered into friendship with Vicenza while she was attending school, and that he had never thought of, nor considered, nor spoken of anything of that kind; for which reason the Bishop stated in the year 1856: if anyone should affirm, on the occasion of marriage banns, that he had taken the bride as his daughter, it should be understood that this refers to a notable difference in age between the betrothed and the bride; or to a shameful transaction that was alleged to have occurred between Joseph and the bride's mother, even after her conception. However, the arguments against are weakened by the fact that, from the very words of Joseph himself, it is clear that he had entered into a friendship with the T. family from a young age, although he affirms that he has not done anything dishonorable; for these words are best understood in the context of the age of 15 years, with respect to the age at which he took Vicenza as his wife (1); nor should Joseph's words be twisted, since what he intended to express by those words is confirmed by the testimony of other witnesses (2); and also from those commonly used words: "Pater" leads the daughter to the altar, to whom this applies, the Bishop has explained. A more difficult question was whether Joseph had ever had carnal relations with Vicenza's mother. It is true that 1. they were never caught in the act, nor were any consequences of such an act reported, nor was any judgment ever rendered on this matter, nor was there any accusation from anyone; indeed, there was not even a denunciation, either to the Curia, or even to the Parish Priest (which would have been extremely difficult, if not impossible, if there had truly been such frequent relations between Antoniam and Joseph; for such deeds are usually reported to the Parish Priests, both by the pious and by the wicked, although for different reasons); nor was there ever any warning given on this matter, either by the authorities, or by them, or by others. 2. It was also observed that neither Joseph nor Antoniam had manifested anything of this kind in public; regarding (1) The difference was 16 years. (2) This is better understood if we consider that Italians are accustomed to answering such questions with: "Eh, fin da ragazzo! era un

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ragazzo! era per così dire una creatura! fin da creatura!" understanding by these words the ages of 14, 15, 16, and even 17 years.

[*Latin ed. p. 216*]

216. CONCERNING THE IMPEDIMENT TO MARRIAGE. The case of Joseph is so manifest that, even if he had been asked once and again about obtaining a dispensation from the impediment of affinity, he would never have agreed, constantly affirming that he needed no dispensation. (1) For, although he frequented the house of Antonia, and although he had received letters from her, not amorous ones, and although he had dined and breakfasted in her house, whether her husband was present or absent, he had never behaved dishonestly with her; and Antonia herself testified to this, affirming that Joseph had never dared to utter a word that would bring dishonor upon her.

3. The witnesses who seem to speak contrary to this, either speak of rumors, or too generally, or not without exaggeration. They say that they had heard it from the world, from public opinion; they speak of an illicit friendship, of signs of the most ardent love, of a scandalous friendship, of an illicit affection, and similar things, which do not necessarily signify, nor immediately, a carnal union, which is properly required to establish the impediment. (2) To these, one testified of his own suspicion, (3) another of the words of another, a third affirmed that he had seen nothing that would indicate that his wife had closed the door to him. But the Advocate keenly observed that this third witness was more likely to be helpful than harmful; for it is not the case that two people who go into a room together are necessarily agreeing to be seen from the opposite houses.

4. However, these witnesses were refuted by other witnesses; and by careful questioning, one testified that nothing evil had occurred in the familiarity of Joseph with Antonia; others testified that that familiarity had been begun for the sake of friendship, not for the sake of sin; but where the testimonies are not consistent, the crime is not proven; and if the plaintiff does not prove the matter, the defendant is acquitted. (1) Indeed, such constancy in denying a fact from which not only the nullity of marriage would follow, but also the eternal condemnation of both himself and the woman, to whom silence could have led to the request for a dispensation, has the greatest weight in the matter. (2) These things have force from this legal axiom: a union is not proven by appearance; therefore, either by confession, or by consequences of the union; but in this case, neither is present; and the rumors and clamor of the public are matters that are very uncertain. (3) And this suspicion, among some peoples, especially islanders, is the foundation of many accusations and calumnies.

[*Latin ed. p. 217*]

ON THE IMPEDIMENT TO MARRIAGE 21.7 Indeed, two witnesses

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were seen to give entirely contradictory testimony; namely, a woman named Alia, concerning whom the Episcopal Curia of V. asserted that she was incapable of giving reliable testimony, testified that she had seen Joseph frequently visiting the home of Antonia; that she had observed an illicit relationship between them; that Antonia had made supplications to her, urging her to write to Joseph, and that she had received from Antonia a letter containing expressions of love, and furthermore, that she had been given a ring by her, so that she might remain silent; that she had been invited to dine with Antonia; and that during the dinner, she had observed touches and gestures that were not honest between them, which were repeated after the dinner; and that she had also seen Antonia enter the bedroom with the aforementioned Joseph, dressed in a most improper manner, and that they had remained locked in the room for about an hour. Alia, also known as Alice, and who is the daughter of Antonia and the fiancée of Joseph, testified before the Assistant Parish Priest on October 20, 1856: "I, the undersigned, have with my own eyes seen the carnal intercourse between Joseph and my mother; and I am prepared to confirm this under oath, if it should be necessary." However, the Advocate refuted the testimony of both witnesses; in the case of Vicentia, because 1. she was summoned to give testimony before the judicial sentence by the Episcopal Curia, although prudently; 2. because she herself subsequently affirmed that she had suffered a certain moral violence from the Assistant Parish Priest, and that she had written what she was told to write, without understanding the meaning; 3. because she affirmed that she did so because she had a certain animosity towards Joseph, and on the contrary, she wished to marry J. F., who was the first to inform the Parish Priest of such impediments; and that a young girl, being in love, is prone to all kinds of falsehoods; 4. Finally, because Vicentia publicly retracted, before the Curia of V., what she had testified against her mother and Joseph, presenting documents as proof. Therefore, in order to provide certain ecclesiastical judges with information regarding the existence of an impediment, she was providing them with the opposite. As for the witness M., concerning whose integrity the Curia of V. affirmed that she was entirely incapable of giving reliable testimony, the Advocate refuted her testimony, noting that 1. in her testimony with Antonia, she had completely denied everything that the witness had said, and had even insulted her.

[*Latin ed. p. 218*]

218 OBJECTIONS TO MARRIAGE 2. The Court judged it prudent to overlook other matters, lest something more serious should arise. 3. In her testimony, there were things that are not so easily reconciled with the truth. How could it be true that the witness M. testified that she had invited Antoniam to dinner, if she intended to be intimate with Joseph, and if, in

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the absence of her husband, she could do whatever she pleased, by the grace of God? And also, that she had intended to leave the house of Antoniam, but that Joseph began to make improper advances and had relations with her, and that Antoniam had not permitted this; clearly, Antoniam was so shameless that she would want an obvious witness to her sin; which is something that even public prostitutes would scarcely endure (1). 4. Nor was she so chaste. For when called to testify with Joseph, he not only denied what she had stated, but indeed affirmed that he had been in a semi-open room, not with Antoniam of Vicenza, but with the witness M. 2. That he had had improper touches with her, not with Antoniam (2). 3. That she had imprudently recounted these things to some of her friends, of whom she names four, among whom was the witness M. herself. These were called to be examined, but were not present. For this reason, the testimony of M. must be considered very suspect, since she may have wanted to slander Antoniam, who herself had been intimate with Joseph. 4. Finally, the witness M. does not speak of carnal intercourse, but of things that happened in the room; and correcting the previous testimony, she affirms that the door of the room was semi-open, not completely closed; but it is unbelievable, given that her testimony is true, that Antoniam had carnal relations with Joseph in a room with a semi-open door, so that M. would be a witness to her sin. (1) Furthermore, the laws proclaim: Witnesses who testify are not considered credible, nor do they prove anything; indeed, they are suspected of lying. L. fin. ff. quod met. caus. And: A witness who is true in part and false in part is considered entirely false. And rightly so. For in order for a witness to be admitted, two things are required: knowledge and integrity; but in a witness who is partly true and partly false, both are lacking. (2) However, the improper touches of Joseph, with the witness N. present, exclude, unless my opinion deceives me, any carnal intercourse. For women are seized by jealousy; therefore, Antoniam would not have permitted those touches, but would have rebuked Joseph, and would have ejected the witness M.; but she affirms that she was detained in the house by Antoniam, which is contrary to what usually happens in such circumstances.

[*Latin ed. p. 219*]

INHIBITION OF MARRIAGE 219. Therefore, when no evident proof exists, because the zeal of the Parish Priest was inflamed after receiving the letters from F. from Vicenza, and after the proclamations concerning the future marriage, and the witnesses are either not credible, or not in agreement, using vague words, not cohering with themselves, being insufficiently firm and consistent, their testimony is either rejected by others or by themselves, and is reduced to nothing, so that not even one witness remains who is both explicit and worthy of belief; and when the reputation and the rumors of the common people attribute a carnal relationship

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between Joseph and Antonia, and when the witnesses are not sufficient (1), and furthermore, no legal confession is obtained, and, on the contrary, a perfect and absolute denial is presented, not devoid of reasons, then the advocate justly concludes that the carnal union between Joseph and Antonia cannot, in any way, be proven, and therefore, from this, no impediment can arise in the external forum to prevent the marriage. However, this also applies to the case in which witnesses have testified about the union, and have testified truthfully, but have not been able to establish their credibility; in these circumstances, their knowledge remains with themselves, so that the fact about which they testify is neither proven nor made public through their testimony. Furthermore, Fagnanus, a man of great authority in this matter, and who is cited by Lambertini in *Institutiones Eccl.* 87, § 44, clearly affirms and demonstrates that a hidden impediment is that which cannot be demonstrated in any way, and is permitted only to the judgment of God (2); whereas, a truly hidden impediment is that which is only confirmed by two, three, or five witnesses. We say that an impediment, or a hidden crime, is known to some, say, four or five, and this opinion is maintained by the Holy Penitentiary. These things are not invalidated by the fact that the testimonies were received both by the Episcopal Curia of V., and by the Metropolitan Curia of G.; therefore (1), Chapter 8 of the *Tua* concerning the cohabitation of clerics (2), and rightly so. For if the testimony of only one person were sufficient to establish an impediment, without the necessary proof of the testimony to establish credibility, I do not know if human society could subsist. It is clear that an unproven testimony should not be considered. Hence, the laws proclaim: "The witness must state the reason for his testimony." *L. 1. ff. de transact.*, and *h. Solam 3 Cod. de testibus.*

[*Latin ed. p. 220*]

220 The impediment to marriage, having been publicly declared, must be considered entirely valid; for this is precisely the matter under consideration: whether the sentences of both tribunals are to be confirmed, rejected, or annulled (T). We are not dealing with the matter of simony, where mere defamation is sufficient to prevent a benefit from being conferred upon the defamed person, because it is certainly the safest course to prevent an unworthy person from receiving a benefice; but we are dealing with the matter of marriage, in which, besides the remedy of public dispensation, there is recourse to an internal forum, through which both the reputation and the conscience are consulted. Furthermore, there will be those who assert that the judicial sentences of both tribunals were not so evident as to provide a certain judgment in this matter; therefore, it must be concluded that neither Vincent nor Joseph, or Vincentia, can or should seek, or receive, a dispensation in the external forum without a significant and infamous disgrace to both Joseph and Vincentia, and to this woman. Having consid-

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ered these matters, we come to two doubtful propositions: 1. Whether the inhibition of the tribunals of V and G is valid in this case? And, assuming it is valid. 2. How should provision be made in this case? The Sacred Congregation of Councils answered: Provision should be made according to the requests of the Bishop, namely, for the power to grant a dispensation for caution regarding the impediment of affinity arising from an illicit union, in order that Joseph and Vincent, or Vincentia, may be able to contract marriage in the sight of the Church, with the consent of the Most Holy [Pope]. Indeed, the Sacred Congregation of Councils explicitly excluded the impediment of the first degree of consanguinity, for which no argument was presented to assert that it did not exist, and no proof was offered; and, since that impediment exists, it would have been useless to speak of this marriage. However, it was deemed necessary to grant a dispensation for caution regarding the impediment of affinity, from which, in order to prohibit (but not to allow) marriage, no proofs of the strictness of the law are required. (1) Certainly, such judicial sentences of both tribunals do not stand in the way: for if they were finally annulled, it would become manifest that the impediments declared did not exist, and that the accusations made were false, or at least not proven. Therefore, the impediment alleged would not only remain hidden, but would also be destroyed. This, however, applies to any other accusation that is alleged, but not legally proven.

[*Latin ed. p. 221*]

INHIBITIONES MATRIMONII: Sunt sufficientes ad inhibendum matrimonium, testimonium unius personae, vel etiam fama publica. Hoc est demonstratum in cap. 2, de consanguineis, et in cap. 21, et 27, de testibus. EX HOC COLLIGIMUS: I. Ad inhibendum matrimonium, sufficiens est fama, vel rumor vulgi, de aliquo impedimento existente, si hoc est deductum ad Curiam Episcopalem, vel ad Parochum. II. Attamen, in inquisitione iuridica, oportet certo constare de existentia impedimenti; documenta et testes sunt probanda juxta legitimas regulas criticae; et si de existentia impedimenti non constabit, matrimonium non debet esse inhibitum. III. Si tamen adsint suspiciones gravissimae, ad Sanctam Sedem pro dispensatione ad cautelam est recurrendum.

[*Latin ed. p. 222*]

From the Most Holy Congregation of the Council, concerning the Conventual Mass, dated May 24, 1873. Ignatius L., Canon of the Collegiate Church of M., in the Diocese of C., who, in the year 1701, having contributed his own funds to increase his Canonry, desired that, in the future, it be elevated to the Primicariate, with all honors, prerogatives, and preeminences pertaining to similar primicerial dignities. The aforementioned wish, having been fulfilled through the acceptance of the Chapter, elevated that Canonry to the Primicariate, which is the second

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highest dignity within that Chapter. However, in that Diocese, it was customary that the Dignities be obligated to attend the Conventual Mass in turn. In the year 1741, a question arose between the Primicerius, Very Reverend Father, and the Chapter concerning this matter. The Primicerius maintained that he was not obligated to celebrate the Conventual Mass in turn, according to the terms of his Canonry; the Chapter, on the other hand, asserted otherwise. To prevent a dispute, the matter was settled on December 7, 1744, in the following manner: namely, that the aforementioned Primicerius would be obligated to perform all the duties of his Canonry, just like the other Canons who were marked with the sacred order of the Priesthood, except for the Conventual Mass without singing, or with reading; in exchange for this concession, he would be obligated to celebrate a solemn Mass on the second and third days of Easter, and on Pentecost, on the feast of Saint John the Baptist, the patron of the diocese, on the feast of the dedication of the Church, and on those two days on which the solemn exposition of the Most Holy Sacrament was held; furthermore, on these days, he would be obligated to perform the customary weekly office, as is done on the Paschal days. Summary of the matter.

[*Latin ed. p. 223*]

CONVENTIONAL MATTERS 223 but the Archpriest did not wish to perform the solemn duties himself. And these things were accepted by all with one voice, without any dissent, and with the consent of the Primicerius himself. However, since such an agreement, although written, was not entirely observed, the question arose again, and since the Bishop was unable to resolve it, it was brought before the Sacred Congregation of Councils, and the reasons of both parties were presented there. The discussion concerned the "optical" aspects. Those things which seem to favor the Primicerius. The Primicerius considered himself exempt from the obligation of the conventual Mass at Tournon, based on four grounds: foundation, convention, custom, and prescription. Indeed, regarding the foundation, he argued that the founder had intended that the dignity of the Primiceriate be established from the canonry which he himself held, "with all the honors," privileges, and preeminences pertaining to similar primicerial dignities. To determine the privileges of any dignity, Innocent III states in *Liber Primus*, Decret, chapter 6: "We decree that the Precentor, thus instituted, in assemblies, processions, and other matters, shall hold the same dignity as those who hold such offices in other English churches." From this provision, Gonzalez derives the following rule in *Tomo I*, Decret, page 135: "In granting honors to a new dignity, the custom of neighboring churches is considered; for in cases of doubt, if it is not apparent that something has been done, it will follow that we should follow what is customary in the region in which it was done." However, it was shown to all, both in that collegiate

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church and in neighboring churches, that the Primicerius was exempt from the conventual Mass. And it could not be maintained that the canonry conferred upon the dignity of Primicerius was solely for the sake of honor, and not for the sake of privileges; for the founder rather intended to include the latter.

[*Latin ed. p. 224*]

224. The conventual right is to be understood according to the very words of the foundation, whatever they may be concerning other dignities; for the adverb "whatever" does not admit of exception, as Vivianus teaches in *de hwep. i.a.r. 2, lib. 13, cap. 18, n. 198. This clause includes every kind, and is universal and distributive, and it shows the full and abundant will of the founder. Nor does this cause difficulty to the principle that a subsequent dignity does not remove the preceding obligations annexed to the canonry by the foundation; for the original status of the canonry is entirely changed, and assumes a new form and nature from the new erection, by new Bulls, by a new canonical institution; by which new obligations are substituted, and the old ones extinguished. Both doctors and tribunals, and the principles of law, seem to favor this. For the principles of law proclaim: "A subsequent dignity satisfies the preceding obligation." Pignatelli, in *Tom. 1, Cons. 103, n. 6*, wrote: "In the *Prota* of March 17, 1596, before Litta, it was said: 'When a less principal dignity is united to another, more principal one, or when the union is made by incorporation, the less principal dignity, or that which is incorporated into the other, remains suppressed, the title is extinguished, and it becomes part of that more principal dignity.'" Furthermore, Garzias, in *de Benef. part. 12, Cap. 2, n. 13*, and in *Burberi, Servitii Decani* of January 12, 1594, before the same, wrote: "'The Doctors have decided that the Dean is not to be held to serve as a portarius, because the portion, by the very fact that it was united in perpetuity to the dignity of the Deanate by means of incorporation, ceased to be a portion, and the name and effect of that portion was extinguished; for otherwise, what was introduced, by means of a union for the honor of the dignity and its increase, would be turned into a diminution of the honor and dignity of that dignity by means of a service to that dignity, which is most unbecoming, contrary to all reason.' He must interpret every dispute in a sound manner, so that all contradiction may be avoided." Garzias, *part. 3, cap. 2, n. 510, 2*. Furthermore, from the convention of 1744, the Primicerius considers himself exempt from the burden of the conventual mission; in it, the Primicerius is considered as *altero*; the canons are held to all things.

[*Latin ed. p. 225*]

Concerning INITIAL matters, 225 obligations are to be fulfilled, excluding only the conventual Mass after the reading. The Popes have defined

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that, for any transaction by which the rights of the parties are extinguished, the following shall hold: Book 1, Decretals, title 36, where it is written: "That every instrument, or whatever else is, which pertains to the parties, which, whether they desire to come to an agreement with each other in any way, or by prescription of time, or otherwise by law, or by any privilege, might be of service, shall be as if void and of no force, and only the agreements made between you now shall have valid and perpetual force..." Therefore, those things which are concluded with religious care and peace, whatever doubts may arise, all that is contained in those same agreements shall remain valid, firm, and without any contradiction; hence, if a transaction was begun for the sake of peace and concord, it has the force of a judgment and of a matter adjudged; and thus it is prepared for execution, and prevents the entry of any lawsuit; for it is said that an exception of a closed case is when a dispute should not be raised from a settled cause.

It is not unknown that a transaction was begun in the year 1744 between the Canons and the Primicerius to prevent a lawsuit; and for this reason, it is manifestly to be observed, even because in the same year the Canons, contending, again acknowledged and approved it, so that, without anyone objecting, the Archpriest celebrated Mass on the feria 2 and 3 of Easter, according to the form of the Transaction.

It is wrongly objected that this agreement, lacking the authority of the Ordinary, does not bind successors, and therefore can be abrogated by a new resolution of the Chapter; for when a right has been granted to another by some statute, it cannot be taken away without the consent of that party, lest the well-known rule of law be offended: "No one can change his mind to the detriment of another." Reg. 23 in 6. Bartolus in L. omnes populi § circa secundum ff. de iustitia et iure states: "When a statute provides that those who come to live in such a town shall have perpetual immunity, and some have come, if now the city wishes to revoke the statute, and does not want them to enjoy that immunity, certainly, to the detriment of those who have already come, it cannot be revoked." The same, therefore, should be said in other similar cases. Acta Tom. VIII, fase. L XXXVIII. 15.

[*Latin ed. p. 226*]

226 CONVENTUAL MASS: What could be more fitting in our case, since we are not dealing with a statute, but with a concord established through an unforgettable custom, which successors are obligated to observe, unless the confirmation of a Superior intervenes, seems certain. Indeed, Pignatelli, Volume V, Council 12, paragraph 83, teaches that, since concord is made for the sake of peace, especially among clerics, it must be maintained above all in matters of this kind, as Lotarius states in his work on ecclesiastical benefits, Book 1, question 16, paragraph 33, and as the Rota has affirmed repeatedly in the decrees *Seraph*, 22 and 8.1. Successors are also bound by

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such concord when it appears to have been initiated in good faith regarding a matter that is highly doubtful, and in order to extinguish disputes, as Gratian teaches in the distinctions 476 and 867, where he states that successors are bound by a concord initiated by their predecessors, even if the confirmation of the Pope has not intervened. This was also affirmed by the Rota in the case of *Cosentina*, precedent of June 6, 1618, before Quonozetto. Especially if it has been observed for a long time, as in the case of the concord observed for a period of twenty-three years. Indeed, observance induces approval, from which either a customary law is said to arise, or at least a custom is established that has lasted for at least ten years. The Rota, in the case of *Cordubensi* regarding tithes, of June 28, 1628, paragraph 3. The Primicerius also considered that custom favored him, and therefore it must be observed entirely, provided that it is not disapproved of by ecclesiastical laws, so that disputes may not arise. Indeed, the authors state this clearly. St. Augustine writes in Epistle 128: "Even the change of custom, even if it is beneficial, disturbs with its novelty." Dioassius in Book 52: "It is best to eliminate all animosities and ambitious contests, and therefore to allow neither new names nor anything else from which discord may arise." Elianus in Book 5, on various histories: "Often, even a change for the better is the beginning of greater evils" (1). Therefore, Pope Honorius III, in his letter to Ca(1) Tacitus agrees in Book 5, Caesar in Book 6, on the Gallic War; and Patricius in Book 1, on the Republic.

[*Latin ed. p. 227*]

The Conventual Mass, in a letter dated 227 of Paris, wrote: "According to custom, which is not a light authority, and which often causes discord, we, with the authority present, forbid that any of our venerable brothers, without the counsel and consent of our most Reverend Bishop, alter the constitutions and customs of your Church, which have been approved, or introduce new ones, declaring them invalid if any such changes have been made. Furthermore, the custom favorable to the Conventual Mass, established in the year 1744, is demonstrated by the Primicerius, and by the wooden schedule for the choir, which does not include the Dignities in the Conventual Mass, and by the custom of neighboring churches, in which the Dignities are not bound to attend the Conventual Mass.

4. Finally, concerning the prescription, the Primicerius noted that a prescription of one hundred years is considered a law; and he argued that this prescription favors him. Nowhere does it appear that the Primicerius has fulfilled the obligation of the Conventual Mass. Moreover, it is not difficult to ascertain that, especially in recent times, he has often celebrated Mass, as can be seen from the Register of Masses. The Canons of the Collegiate Church are obligated to celebrate one thousand one hundred Masses each year, of which three are celebrated daily; and these include the Conventual Masses; therefore, the Primicerius himself celebrated these Masses; or it

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sometimes happened that, with a changed intention with another Canon, he himself noted these Masses in the Mass book as if he had celebrated a Conventual Mass. Furthermore, he argues that, in order to abolish the prescription, it must be constantly and clearly demonstrated from the Mass code that the Primicerius has always celebrated the Conventual Mass for himself, and not for others; which cannot be demonstrated; for the Masses that are found to have been celebrated by him are either Masses offered for others, or for benefactors. If, at any time, this custom has been interrupted, he adds that this occurred in recent times, and that these actions cannot overturn the prescription of one hundred years, as Pitonio alleges in paragraph 100, number 285, notwithstanding the interruption of the aforementioned custom."

[*Latin ed. p. 228*]

228. The *Missae Conventualis* number 1642 and *Herae* of the year 1671, because the observance of a centennial year is not destroyed by subsequent acts, as the Rota declared in *Maior Icen*, sentence of November 28, 1704, but rather another observance to the contrary is required, as the Rota stated before Emerix, judgment 1195, number 11. The Primicerius also states that there is no difficulty, because the Canons allege that a substitution has been carried out by other Primicerii, who celebrated the Conventual Mass on weekdays; this, however, was done rather for the sake of propriety than out of obligation. Finally, some Capitulars are present, asserting that the Primicerius of *turno* was exempt from the Conventual Mass, although previously they had stated the contrary. Regarding the added office, it can happen that someone from the Capitulars, being exempt from such a burden, causes the entire body of Canons to be burdened; for in order to abolish a certain obligation, the long-term observance, which introduces prescription, is of great value. In our case, however, the prescription seems to be legitimate, since there is no lack of a title arising from the convocation, nor of good faith descending from the patience of the Chapter, nor of the prescribed time, since it appears that an observance of more than a hundred years exists. Obligations, however, are extinguished by prescription. Furthermore, there is a transaction which creates a parallel to a settled dispute: and since this seems to have been done to prevent disputes, it has force. Moreover, the fact that it was not approved by apostolic authority, and therefore successors cannot be bound by it, does not create a difficulty, because the apostolic approval is an external solemnity, which is presumed after the lapse of thirty years: indeed, when a centennial observance exists, the apostolic approval is always presumed, even if it has not been promulgated, as the Rota declared in judgment 624, number 8, before Oli vatio: "For the space of a hundred years, and the prolonged course of time, induces the Apostolic approval, and it should be presumed to have intervened, even if it has not been promulgated." This applies to

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the Chapter. The Canons, however, maintain that both the law and the fact are in their favor: the law, because Benedict XIV in the Constitution *Cum semper oblatas* states: "Whoever..."

[*Latin ed. p. 229*]

THE CONVENTUAL MASS 229: Chapters, or Canons, or Prebends, or Choral Benefices, possess the conventual Mass, and celebrate it in their respective turns. He adds: The conventual Mass, although not named as one of the canonical hours, nevertheless belongs to the divine office; therefore, if the canons of the Cathedral and Collegiate churches are bound to the daily office of the day, they are also bound to the daily celebration of the same Mass (1).

5. Furthermore, the Congregation of the Council, to which the burden of celebrating the conventual Mass pertains, as stated by Spiridione Talu on page 18, number 128, responded: The conventual Mass pertains to the Singer and Canons of the Collegiate Church, and not to the Vicar, when the Vicar has only the care of the souls of the parishioners; but the Singer? The Primicerius attempts to prove his claim based on the opinion of Talu on page 8, number 43. The Archpriest or other dignity should not interfere in the administration of the choir, which belongs solely to the Singer or Primicerius. Regarding the fact, the Canons assert that the Primicerius, both before the transaction of the year 1744 and afterwards, has always held this burden; they prove this first from the very words of the transaction in which it is stated that the Primicerius is bound to the turn of the conventual Mass, by virtue of the observance and possession in which our distinguished Collegiate church stands; and secondly, they attempt to demonstrate this from books and witnesses. The witnesses testify: The Primicerius has always been bound to the turn of the conventual Mass, except on Saturdays and Sundays, for which he celebrates on other days of the year. Furthermore, the aforementioned transaction was a personal favor granted to the Primicerius R., which does not pass to his successor (2), and moreover, that the first prebend of the Primicerius has been changed to another, and it is this actual prebend which is burdened with the obligation of 100 Masses. (1) This is confirmed by Liguori in the Epitome of Moral Theology, and by Crispin in the Treatise on the Duties of the Pastoral Visitation, page 131, § 3. (2) For the laws declare: A privilege follows the person, and perishes with the person. Cap. privileg. de reg. juris, in 6. A personal privilege does not pass to the heir. L. 28, ff. de Legat. 2.

[*Latin ed. p. 230*]

230 OF CONVENTUAL MASSES. To this, however, by virtue of office, is added the fact that the Primicerius does not participate in the customary observance, 1. Because, in the case of a contrary action, it appears that he has often celebrated conventual Masses; 2. because the Constitution of

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Benedict XIV rejects all custom. As for the transaction, it should be noted that it is only valid in cases of doubt and uncertain disputes, and that it has no force in matters that are certain and clear (1), even if it appears to be undertaken to avoid expenses and the inconveniences of litigation. However, the transaction of the year 1744, which was initiated to prevent disputes, is clearly about a certain matter, as is evident from the words of the transaction itself, in which it states: "The Primicerius is subject to all obligations as are the other Canons, both under the observance rules that are in force in our distinguished Collegiate Church, and under the decrees of the Holy Congregation of Councils, in which it is established that those holding dignities in Collegiate Churches are to exercise the office of hebdomadarius and perform other duties as are the other canons." From these words, the Primicerius himself understood that his right could not stand; therefore, since the transaction was made concerning a certain matter, it must be considered to be of no value. However, even if that transaction subsists, it is certain that it does not bind the successors, unless it is approved by apostolic authority, as is necessary in these cases, especially when based on certain knowledge, with knowledge of the cause, and not in a general form, as the Doctors teach. See Pignatelli, Vol. 4, Consult. 27, n. 9. This does not seem to be contradicted by the fact that their predecessors brought this matter to an agreement, if it has not been confirmed by the authority of the Supreme Pontiff, because it does not bind the successors. Council of Trent, Session 6, Chapter 4, on Reform. Extravagant "Ambitiosae de reb. Ecclesiae non alienand." Rota apud Gregorium XV, decision 152, where Add. litt. A. Buratt. Decis. 132 ex c. veniens de transact. states: "It is not sufficient that a transaction between ecclesiastical persons be confirmed in a general form by the Holy Apostolic See in a judicial proceeding, but it is necessary that it be confirmed specifically (1)." A transaction must be made concerning a doubtful matter. A transaction cannot be made concerning certain matters. L. 1. ff. de transact.

[*Latin ed. p. 231*]

THE CONVENTUAL MASS 231 > From certain knowledge of the Supreme Pontiff, and with knowledge of the cause, "otherwise, those matters do not hold, and they were removed by the Council of Trent because of a lack of confirmed agreement based on certain knowledge" (1). > For this reason, since both law and convention favor it, and custom and prescription cannot be invoked in favor of the Primicerius, it seems that a judgment should be rendered in favor of the Chapter. After maturely considering all points presented by both sides, the Holy Congregation of the Council, regarding the question "Whether the Primicerius of the Collegiate Church M. is bound to celebrate the Conventual Mass in turn, as are the other Canons in this case," responded: "Let concord be maintained, dated December 7, 1744." FROM WHICH WE GATHER: 1.

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That the celebration of the Conventual Mass follows from the daily office to which the Canons are bound, and that it is a part of it. 2. Therefore, each Canon, even those holding dignities, is bound to celebrate the Conventual Mass in turn. 3. That no agreements entered into by Chapter officials and other ecclesiastical persons regarding the dispensation or abrogation of the rights or statutes of any Church have any force without the consent of the Roman Pontiff. 4. However, these agreements, entered into in good faith and with title, are valid even without apostolic approval, if they have been prescribed for a long time. (1) This is in agreement with Fagnanus, book 1, Disputations, 32, paragraph 13; Rota Decis. 306, paragraph 10; Decretals, concerning transactions, in Chapter Veniens, part 2 and 3; Reiffenstuel, ad eundem loc., vol. 3, paragraphs 64 and 65; De Luca, De Beneficiis, Viterbie, September 19, 1767, and others; 10. recent. S. Congregation O. in.

[*Latin ed. p. 232*]

FROM THE HOLY CONGREGATION OF THE INDEX, DECREE, ON THURSDAY, THE 10TH DAY OF JULY, 1874. The Holy Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by the Most Holy Lord our Pope Pius IX and the Holy Apostolic See, which presides over the Index of books of pernicious doctrine, and consequently over their condemnation, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on the 10th of July, 1874, condemned and condemns, prohibits and prohibits, and orders that the following works be referred to the Index of Prohibited Books:

* *Drei Gewissensfragen über die Maigesetze.* In Latin: *Tria quaesita conscientiae relate ad Leges Maii.* — Mainz, 1873.

* *Ehrerbietige Vorstellung und Bitte an den hochwlirdigsten Episcopat in Preussen : ein Wort zur Verständigung von Vincentius Sincerus.* In Latin: *Reverens expositio et supplicatio Rmo Episcopatui Borussico. Verbum pro conciliatione a Vincentio Sincero.* — Munich, 1774.

* Ormanian M. — *Le Vatican et les Arméniens.* — Rome, 1873. Imprimerie Romaine de C. Bartoli. Decree, Sacred Office, Thursday, the 4th day of March, 1874.

* The author of the work entitled: *Union generale dans le clergé séculier du sacerdoce et du mariage* by Abbot Caillet. — Meulan, 1873. Prohibited. Decree, 5th of February, 1874, having commendably submitted and disapproved of the work.

[*Latin ed. p. 233*]

DECREE 235 Therefore, no one, of whatever rank and condition, should dare to publish, or, having published, to read or retain the aforementioned works, in any place, in any language, but rather they shall be compelled to deliver them to the Ordinary of the place, or to Inquisitors of heretical

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depravity, under the penalties indicated in the Index of Prohibited Books. Which [Decree], having been related to the Most Holy Lord Our Pope Pius IX through me, the undersigned S.I.C., His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome, on the 11th of July, 1874. Anthony Cardinal De Luca, Prefect. Father Jerome Pius Saccheri, Order of Preachers, Congregation of the Secret. In the place of the Seal. On the 20th of July, 1874, I, the undersigned, Master Cursor, testify that the aforementioned Decree was affixed and published in the City. Philip Ossani, Master Cursor.

[*Latin ed. p. 234*]

FROM THE HOLY CONGREGATION FOR RITES. DECREE Concerning the Beatification and Canonization of the Venerable Servant of God, Sister Margaret, a professed nun of the Order of Discalced Carmelites. Presented by the Reverend Doctor Gustavo Canonico Gallot, Honorary Chamberlain to the Most Holy Lord Pope Pius IX and Promoter of this Cause, and by the Eminent and Reverend Cardinal John Baptist Pitra, Proponent of the Cause, the following question was proposed this day in the Ordinary Congregations of the Sacred Rites to the Vatican: "Whether the judgment of the Judge, delegated by the Reverend Bishop of Divionen, concerning the aforementioned cult, or concerning the conformity of the decrees with those of Pope Urban VIII, should be confirmed in the case and for the purpose in question?" Furthermore, the Eminent and Reverend Fathers, Prefects of the Sacred Congregation for Rites, having carefully considered all matters, and having heard the voice and written opinion of the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, judged it fitting to respond: "Affirmatively, that is, the judgment is to be confirmed." November 28, 1874. Subsequently, a faithful report of the foregoing was made to the Most Holy Lord Pope Pius IX by the undersigned Secretary of the Sacred Congregation for Rites, and His Holiness deigned to declare the Rescript of the Sacred Congregation to be entirely valid and confirmed. December 3, in the same year.

C. THE BISHOP OF OSTIA AND VELITERNO, CARDINAL PATRIZI, S.R.C., PREFECT.

In place of the Seal.

D. Bartolini, S.R.C., Secretary.

[*Latin ed. p. 235*]

235 DECREE of the Toletana Congregation regarding the Beatification and Canonization of the Venerable Servant of God, Father Alphonsus de Orozco, a Priest of the Order of the Discalced Carmelites of Saint Augustine, of the Spanish Province, concerning a Doubt: regarding what and

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about which miracles it is established in this case, and to what effect does this pertain? Among the sons of the most holy Augustine, a new light of sanctity shines forth: the Venerable Alphonsus de Orozco, a Spaniard, who, like a lamp hitherto hidden under a measure, is now placed upon a candlestick, that it may shine to all the faithful who are in the house of God. While he lived on earth, he illuminated Spain with the preaching of the Word of God, with pious writings, and with the brilliance of all virtues; especially leaving examples of charity poured out upon the poor, in which his companion, Saint Thomas of Villanova, was a most excellent imitator. After his death, his tomb did not conceal the fame of his sanctity. Indeed, with the authority of the Ordinaries and the Apostolic See, processes were instituted, and his virtues were brought before the Congregation of Sacred Rites for examination. This, happily, was accomplished, and the Supreme Pontiff Clement XII, on the nineteenth day before the Kalends of September in the year 1732, solemnly declared them heroic by a decree. Then, this divine cause, it seems, was delayed by the providence of God, so that it might be brought to completion in these our days, amidst great turmoil in Spain, and persecution of the Catholic Church in all places. Therefore, at the urgent request of the Promoter of the Cause regarding the miracles which were said to have been wrought by the intervention of the Venerable Alphonsus after his death, a trial was instituted with a threefold examination. First, in a preparatory meeting held before the Most Reverend Cardinal Constantinus Patrizi, Bishop of Ostia and Velletri, Dean of the Sacred College, Prefect of the Congregation of Sacred Rites, and Relator of the Cause, on the third day before the Kalends of September in the year 1870; second, in a preparatory assembly held in the halls of the Vatican on the day before the Ides of August in the year 1873; third, in the General Chapters before the Most Holy Lord, our Pope Pius IX, in the same Vatican.

[*Latin ed. p. 236*]

In the aforementioned halls, on the sixteenth day before the Kalends of August of the year one thousand eight hundred and thirty-seven. When the Most Reverend Cardinal Constantinus Patrizi, Relator of the Cause, had proposed the question: "Whether, concerning the miracles, it is established, in the case and to the effect of which we are speaking, that each of the Most Reverend Cardinals and Consultors has presented his opinion." But the Most Holy Lord willed to open the minds of all, and all were exhorted to join together in prayer to obtain the grace of the Holy Spirit from on high. Indeed, the Blessed Father was endowed with this divine grace, and therefore, on the twenty-fifth Sunday after Pentecost, he wished to pronounce his judgment. Wherefore, having first received the sacred Mysteries in his private chapel, he entered the noble hall of the Vatican Palace and, seated on his throne, summoned to him the Most Reverend Cardinal Constantinus Patrizi, Prefect of the Congregation of Sacred Rites and Relator of the

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Cause, together with the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, and myself, the undersigned Secretary, and, in their presence, solemnly declared: "That it is established that two miracles occurred, which Almighty God wrought through the venerable Alphonso de Orozco, namely: the first, the instantaneous and perfect healing of Paidi de Arleaga, a professed cleric of the Order of the Eremites of Saint Augustine, who was afflicted by a very severe acute arthritis; the second, the instantaneous and perfect healing of Maria Aloisia Luzi, a nun, from a lethal polypous concretion in the right side of her chest." He ordered that this decree be published and recorded in the Acts of the Congregation of Sacred Rites. On the seventeenth day before the Kalends of December of the year one thousand eight hundred and seventy-four.

CONSTANTINUS E P. OSTIEN. ET VELIT.

CARD. PATRIZI

S. R. C. PRAEFECTUS.

(Place)
J Sigilli.
Dominicus Bartolini
S. B. C. Secretarius.

[*Latin ed. p. 237*]

237 CONCERNING THE EXTENSION OF THE JUBILEE TO THE ENTIRE CATHOLIC FLOCK. PAPAL ENCYCLICAL OF POPE LEO XII. POPE LEO XII. To the Venerable Brothers, We impart the Apostolic Blessing and Greetings. Urged by the charity of Christ, We, as a fruit of His Passion, and to the extent that divine power allows Us, though unworthy, to provide for all, strive to ensure that the inhabitants of this City, and the pilgrims who come here in great numbers, especially for the sake of this universal Jubilee, are filled with great hope, so that everywhere the zeal of the faithful may be aroused for the benefit of their souls, and for the glory of God and His Church; obeying your earnest requests, Venerable Brothers, and those of the Catholic Princes, for whom true happiness lies in the well-being of the nations subject to them, as was proclaimed by our blessed predecessors, Benedict XIV and Pius VI, We have deemed it fitting to open the treasures of the Church, so that, just as in Rome during the lapsed sacred year, so also in all regions of the world. Therefore, We have issued a Constitution to all the faithful, by which We extend the Indulgence of this Jubilee, and We indicate the pious works that must be performed within a certain time to obtain it, and We also grant you the faculty, at your discretion, to change

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or modify the prescribed works, for the benefit of those who have been legitimately hindered, and We send this to you, so that through you it may be known to all. It is unnecessary to say how important this matter is, and how much effort you must expend, so that the results may correspond to our intentions. For the good that has been derived from this solemn celebration of the sacred year is only as great as the diligence shown. *Acta Tom. VIII, fase. L XX XII*.

[*Latin ed. p. 238*]

The provided text does not contain the quotation from Sirach 7:4. Therefore, no changes are required.

230 Let those who are to be instructed, as is fitting, prepare themselves; and in order that they may achieve the greatest benefit, it depends on the care that you, in the exercise of your pastoral office, devote to this matter. Let them, through you, understand what and how much is granted to them. Show them the value of the treasure that we reserve, and how easily all can participate in its riches, both because of the very extensive faculties for remitting sins that we grant to those who minister in the Sacrament of Penance, and also because of the very nature of the works that are imposed for the expiation of sins. You know how severe was the discipline in this matter before the fourteenth century. Our predecessor, Urbanus II, in the Council of Clermont, said, as recorded in the acts: "Whoever shall have gone forth, not for the sake of honor, or for the acquisition of money, but to liberate the Church of God, which is Jerusalem," that journey shall be accounted as penance for all sins. And indeed, we know that plenary indulgences were not then granted in such a way as the most learned and pious servant of God, Blessed Joseph Maria Thomasius, Cardinal, observed: "This plenary indulgence," he says, "in which the prescribed work was a very serious undertaking, involving arduous, laborious journeys, and dangers to life, so that it seemed rather a change of penance than an absolute remission... this plenary indulgence for the Holy Land was always confirmed by subsequent Popes." Presenting to the faithful the leniency of the pious Mother Church, and the weakness of her miserable children, to whom she now imposes burdens that are so much lighter and easier, and which are worth far more than any price, we are certain that no one will be found so soft and negligent as not to wish to compare these benefits with so small a recompense. However, it must be carefully guarded against, lest, as the Holy Council of Trident puts it, "taking advantage of the opportunity, they consider the sins themselves to be lighter," and, out of contempt for the Holy Spirit, fall into more serious ones, hoarding up wrath for the day of wrath. Therefore, let the Church show liberality in this matter, but let nothing whatsoever of diligence and effort be neglected, so that men may remember whatever they have done against the law of God, and may, with

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heartfelt sorrow, detest it.

[*Latin ed. p. 239*]

LEO, POPE X, 239, and let them sincerely acknowledge [God's mercy]; and thus, let them be more aroused to admire and love the goodness of God, who readily offers Himself to those who, having once been freed from the stain of sin and the servitude of the Devil through Baptism, and having received the gift of the Spiritus Sancti, should not fear to knowingly violate the temple of God and grieve the Holy Spirit.

For this reason, following the example of our predecessors, we have ordered that a solemn Jubilee be proclaimed, so that divine assistance may be publicly implored for the successful outcome of this great undertaking; without which, no human weakness can accomplish such a thing. Let the people be fed with the bread of the word of the Lord, both in the temples and in the public squares, so that, through the zeal of the ministers of salvation, the Catholic doctrine concerning Indulgences and Jubilees may be diligently taught, and all be reminded of their duty in the Christian institute, and that all may be earnestly encouraged to sincere repentance.

Therefore, let each of you, Venerable Brothers, consider this saying of the Prophet to be especially applicable to that time: "Cry, cease not, lift up thy voice like a trumpet, and shew my people their wicked doings, and the house of Jacob their sins." And let them, through you, and through the sacred orators whom you choose, who are most fitting by word and life to move hearts, impress upon all that which Christ has threatened to all: "Unless you do penance, you shall all likewise perish."

Let them also teach us that it is necessary to pray with fervent prayer for repentance, as the Prophet implored with those words: "Convert us, O Lord, to thee, and we shall be converted." Let them show how much injustice there is in sin; let them instill in hearts the salutary fear of the severity of the divine judgment, and the bitterness of the punishments prepared for those who die in their sin; and let them inspire hope in all, that mercy may be obtained through the infinite goodness of God, who affirms that He will have mercy on those who expect it, whose are those harsh words: "Therefore will I judge every man according to his ways, O house of Israel, saith the Lord God. Be converted, and do penance for all your iniquities." Cast away from you all your transgressions, in which you have transgressed, and make for yourselves a new heart and a new spirit. For I will not the death of him that dieth, saith the Lord God.

[*Latin ed. p. 240*]

240 ENCYCLICAL LETTER "Repent, and live." From this, it easily follows that the Father should be recognized as worthy of love, being so good and merciful; and then, consideration should arise as to how unworthy it is for reason to offend such goodness; finally, the deepest sorrow should arise,

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and detestation of sins, along with a firm and deliberate will to amend one's life and morals. Thus, the internal signs of the necessity of penance, having been brought to the minds of the faithful, they should be diligently taught about it, insofar as it is a sacrament. Let the ministers of the word of the Lord remind them that it is just as necessary for those who have degenerated after Baptism, as Baptism itself is for those who have not yet been regenerated; therefore, it is rightly called "a second plank after the shipwreck," through which one can reach the port of eternal salvation: let them show with what sense of sorrow and humility, with what faith, and with what integrity, they ought to confess their sins; nor should they omit to teach that a general confession is often useful, but in certain cases it is absolutely necessary; but once cleansed by absolution, and eternal punishment remitted, a temporal punishment usually remains; for the divine wrath demands justice, so that those whose crimes would not have been sufficiently punished even with punishments of no defined length of time, may at least be punished with punishments for a defined time. Thus, having prepared the minds of the faithful, they will be able to attain the fruits of the holy Jubilee; but in order that they may undertake works worthy of piety and faith, through which they may obtain so much good, it is your task to make them understand, and to make them certain and convinced, that the Church, founded by the Mediator between God and men, Jesus Christ, has an inexhaustible treasure of merits, to which are added the merits of the Blessed Virgin Mary, the Mother of God, and of all the Saints, raised to such dignity before the Lord, whose riches He has the power to distribute to men, which Jesus Christ Himself has visibly established as His head in that same Church; by His prudent judgment, those merits can be applied more or less to the living, according to the measure of absolution, and to the dead, according to the measure of suffrage, provided that those, through the Sacrament of Penance, have washed away their guilt and have been absolved from eternal punishment, and these, having migrated with charity united to God, in life; in that application of those merits, indulgences are granted.

[*Latin ed. p. 241*]

LEO, Pope, writes: Section 241: It is established that, through this [institution], temporal punishments due to sins are relaxed more or less before divine justice, according to the manner of application established by the dispenser of this grace, the Roman Pontiff, and according to the preparation which the faithful offer to it. Therefore, a plenary indulgence is fully granted during the Jubilee year, and it is distinct from other plenary indulgences which are granted in the manner of the Jubilee, because in the year of solemn remission, which is called the Jubilee, a greater power is granted to the ministers appointed for this purpose to absolve from sins and to relax the bonds and impediments with which the conscience of the confessors is

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often burdened. But while the prayer of the entire Christian people ascends to heaven, a more certain, more abundant, and more merciful remission of sins descends from the Lord. And these things, Venerable Brothers, must be taught to the people; but so that those who have been taught may be able to achieve results, how necessary it is that the work of the priests be fitting and opportune, so that those who must confess their sins to them may understand this thoroughly. Therefore, you must diligently take care that those whom you choose to hear confessions remember and observe what our predecessor, Innocent III, commands concerning the minister of Penance, namely: "He must be discreet and cautious, so that, like a physician, he may similarly apply wine and oil to the wounds of the afflicted, diligently inquiring into the circumstances of the sinner and the sins, so that he may prudently understand what counsel he ought to give him, and using various remedies, he may heal the sick." And let them have before their eyes those documents from the Roman Ritual: "The priest must diligently consider when, and to whom, absolution should be granted, or denied, or deferred, lest he absolve those who are incapable of receiving such a benefit, such as those who give no signs of repentance, who are unwilling to lay aside hatreds and enmities, or to restore what belongs to others, if they can, or to avoid the immediate occasion of sin, or in any other way to abandon their sins, and to amend their lives for the better; or those who have given public scandal, unless they publicly make amends and remove the scandal." Surely, no one can fail to see how far these things are from the reasoning of those who, when they hear of a more grievous sin, or when they feel a multitude of sins.

[*Latin ed. p. 242*]

242 ENCYCLICAL LETTER. Certain individuals, infected with a particular type of pride, immediately declare that they cannot be absolved, and indeed, they refuse to be healed by that very one who is appointed to heal them, as it is written: "For it is not the healthy who need a physician, but the sick." Or, those who, with scarcely any diligence in examining their conscience, or with a seemingly insufficient expression of sorrow and purpose, believe that they can absolve themselves; and then they consider that they have made a safe decision if they postpone the absolution of others to another time. For if there is any place where moderation must be observed, it is most certainly necessary to observe it in this matter, lest excessive leniency in granting absolution lead to a greater facility in sinning, or lest excessive difficulty alienate souls from confession and lead them to despair of salvation.

Many ministers of the Sacrament of Penance are, in truth, unprepared, but often, if the priest, clothed with the mercy of Jesus Christ, who did not come to call the righteous, but sinners, knows how to act diligently, patiently, and gently with them, they can be made ready. But if he fails

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to do this, he is certainly no more prepared to hear confessions than the penitents are to approach him. For they are judged only to be unprepared, not those who have committed very grave sins, nor those who have abstained from confession for many years; for the mercy of the Lord is without limit, and His treasury of goodness is infinite. Nor are they unprepared, but rather, they are judged to be prudent, if they are those who, due to their rough nature or slow intellect, could scarcely examine themselves sufficiently without the help of the priest; but those who, after receiving the necessary guidance from him, are not excessively burdened by his questions, and who, through his diligence in questioning them and in arousing in them detestation of their sins, and through fervent prayers offered from the depths of his heart to God, and through the exhaustion of his charitable efforts, yet lack a true sense of sorrow and repentance, by which they might be prepared to receive the grace of God in the Sacrament.

Whatever the disposition of those who approach the minister of Penance, nothing is more important for him to avoid than that someone, through his fault, should depart, offended by the goodness of God or by the Sacrament of Reconciliation. Therefore, if there is a just reason for postponing absolution, it is necessary for him to persuade the penitents, as much as possible, with the most humane words; for this is both his duty and his concern, and theirs as well.

[*Latin ed. p. 243*]

LEO the Pope, in his exhortations, saw that the salvation of souls was entirely at stake, and he most gently urged them to return, so that, after faithfully performing what had been prescribed for their benefit, they might be restored by the sweet grace of Heaven, freed from the bonds of sin. As a most fitting example of his charity among others, there is Saint Raymond of Pennafort, whom the Church calls a distinguished minister of the Sacrament of Penance. "When sins are known," he says, "let the confessor be benevolent," prepared to bear the burden with him; let him have sweetness in his affection, piety in another's crime, discretion in variety; let him help the penitent by praying for him, by giving alms and doing other good things for him; let him always help him by comforting him, consoling him, promising hope, and, when necessary, even by rebuking him." In this way, those sinners who receive such patience and the kindness of charity will more readily submit themselves to the penance that is imposed upon them for the sake of satisfaction. They must understand that this is not the nature and purpose of a Jubilee, so that through its indulgence, all men might be released from the obligation of satisfying God's justice for their sins, as if it were not necessary for those things that are commanded by the ministers of the Sacrament of Penance at that time to be performed. For that satisfaction pertains to the integrity of the Sacrament, and indeed, we can have no other understanding, while we, by the power granted to us

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by Christ, remit the due penalty for sins through indulgences, except that they may enjoy this benefit only if they have fulfilled all those things by which, as the Church teaches, God desires to be satisfied for His justice through the infinite merits of His own Son, our Redeemer. Therefore, the following words of the Holy Council of Trent should be brought to the minds of those who administer Penance: "Priests ought, as far as prudence suggests, to impose salutary and suitable penances, according to the nature of the crimes and the ability of the penitents." And what the Catechism of the same Holy Council teaches, namely, that in imposing the penalty of satisfaction, nothing should be determined by one's own judgment, but that everything should be directed by justice, prudence, and piety; so that the sins may seem to be measured by a rule, and that the penitents may recognize the gravity of their offenses, it is sometimes useful to indicate to them the penalties prescribed for certain offenses by the canons of the ancients.

[*Latin ed. p. 244*]

244. Let encyclical letters be composed, addressed to those who are called to penance; and let the manner of satisfaction be regulated according to the nature of the sin. Regarding this matter, Priests should especially remind the faithful at this time of mercy and remission, as the Angelic Doctor says: "It is better that the priest should indicate to the penitent the amount of penance that is necessary for his sins, and nevertheless should impose something that the penitent can bear." This very thing was previously taught by St. John Chrysostom: "If, he says, one, wishing to spare nothing, refuses to grant a suitable remission, it often happens that the soul, overwhelmed by impatience and pain, and therefore rejecting everything at once, like a medicine, casts itself headlong, under the weight of the yoke, and broken by the chain." Indeed, I could recount many who have fallen into extreme evil, not for any other reason than that a fitting punishment, and one that was due for the sins committed, was demanded of them. To this pertains that most salutary thing which has been divinely instituted: the power of God, and of Our Lord Jesus Christ, and of His Saints, to dispense, so that, with all the parts of the Sacrament of Penance fulfilled, the faithful may be able to make up, through their works, whatever penance still remains to be done for their sins; see to it that they understand how, in what order, and with what piety, the things that have been prescribed for this purpose should be carried out. Let them learn that these prayers, which are prescribed to be said in certain sacred places, are like those stations which were formerly practiced in the early times of the Church, when it was the custom for the faithful to enclose themselves within the sacred buildings on certain days, and there to fast, to pray, and to reflect on their years, with bitterness of soul, until evening. And if now the Church requires less of her children for this, so that they may fully

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obtain an indulgence, it should not be understood as if she considered that now, as before, God gives less compensation for sins; but rather, while she mitigates laborious works with mercy, and remits as much as possible of the harshness of external satisfaction, she desires that men, through the inner strength of contrition, and the fervent zeal for fulfilling what has been commanded, may bring about an inner progress in their souls.

[*Latin ed. p. 245*]

LEONIS, Chapter 12, verse 24. And to this, it is added that among the prescribed works for the Holy Eucharist, the reception of the same is counted, whereby, since Christ the Lord, the source of all heavenly graces and gifts, Himself is contained therein, there is, indeed, no more efficacious means of kindling the fire of perfect charity; from which it is clear how much care you must devote to this, so that the faithful people may be taught the power and nature of this Sacrament, and may approach it with a well-disposed and prepared heart. You, Venerable Brothers, have what we desire above all, which pertains to the sacred Jubilee: to warn the faithful people that, moved by your zeal for the salvation of the souls entrusted to you, we trust that you will diligently strive that all, by diligently performing those things which we have indicated, may obtain the plenary indulgence, which we offer to all from the inestimable treasure of the Church; but that they may obtain it in such a way that the fruits of it may endure even in the future. For, in view of the concern of all the Churches, our wishes extend to all Catholics throughout the world, so that, if possible, every vice may be removed forever from the Christian people. In each of your flocks, you know well which vices are most prevalent. Therefore, may your pastoral zeal never cease in striving to eradicate them from the depths of the soul. How could anyone have believed that such a grievous offense against God could ever occur among Christians? Yet, alas, there is scarcely any region in which blasphemy is not uttered rashly, and the holy and terrible name of the Lord is irreverently used; and indeed, there are (we shudder to think it, and are ashamed to say) those who do not fear to curse Him whom the angels glorify. Let your zeal burn with indignation against this wickedness, which no greater injury can be offered to the Divine Majesty, and strive with all your might... It is your duty to cherish the beauty of the house of God; but it must be of the greatest concern to you that it is not defiled by the unworthy conduct or appearance of those who enter it, or by any irreverence, by which it is certainly more dishonored; and that the faithful never neglect those warnings of Christ the Lord: "My house shall be a house of prayer," and: "The zeal for thy house hath consumed me."

[*Latin ed. p. 246*]

246 ENCYCLICAL LETTER: Let them remember, through you, the command of the people, which the Lord Himself imposed with those words:

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"Remember to keep holy the Sabbath day," and that terrible judgment upon those who violate it: "They have profaned My Sabbaths exceedingly; therefore I have poured out My wrath upon them, and I have consumed them." Yet, there is such perversity among many, that they do not hesitate to engage in servile labor, or they abuse that immunity from such works which is intended to allow them to fulfill God's commandments, using it instead to serve the Devil; thus, on holy days, they devote themselves to banquets, to drunkenness, to lust, and to all the works of the Devil. Let this scandal, as far as it can be accomplished through you, be removed forever. And let prayer and the hearing of the word of the Lord be encouraged, not only by devoutly attending the most august sacrifice of the Mass, but also by receiving the Body of Christ, which is the most wholesome participation in the sacrifice itself.

What, then, shall we say about the precepts of the Church, and specifically about the observance of abstinence and fasting? How many, indeed, are there who observe that precept, or, at the very least, take care to do so, or who do not entirely despise it? In this, you understand how necessary it is for you to direct your attention so that the faithful may know to what the precepts of the Church pertain, and how much reverence they ought to show to the authority of that parent, of which the Spouse Himself, Christ, spoke: "He who does not hear the Church, let him be as a Gentile and a publican." Indeed, every age claims your attention, but especially that from which the future state of the Church and of human society depends, and therefore impiety strives with all its might to draw both to its own ruin. You know well, and with us deplore, that the education and discipline of youth are largely due to negligence or perversity, and that men seem to have forgotten the sanctity of marriage and its duties; so often, indeed, those contracts, which they call civil, are entered into in such a way that, in many regions, the laws of that most holy Sacrament are violated, which, according to the Apostle Paul, is a great thing in Christ and in the Church. Thus, that most unjust practice has grown among Catholics and heretics alike.

[*Latin ed. p. 247*]

"LIONS OF THE POPE!" - XI, 247. Marriages should be arranged so that either the entire family of the father, or the town of the father (Khenchela), or the wife of the father, may follow the religion. Therefore, you must take great care to ensure that the faithful are instructed in the Catholic doctrine concerning that Sacrament, and that they are led to obey the laws of the Church, and that that fatal scourge of Christian education, as much as you can with exhortation and authority, be removed from the Christian people. Furthermore, see to it that young people are imbued with Catholic morals and customs, and strive, both by urging them yourselves, and by urging their parents and teachers. Especially, see to it that they avoid seducers,

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so that they may abhor books that are harmful to religion, morals, and public order, from which that most miserable condition of opinions, and from which the most terrible crop of all evils has sprung. To prevent this pestilence from afflicting the faithful, you must constantly remind them of what has been justly and healthily warned by our predecessors, and by Christian princes, namely, that such books should not be kept, and do not consider any excessive vigilance or care to be amiss in this matter. It is beneficial for all people of every age, sex, and condition, if they are constantly nourished with the wholesome food of the Word of the Lord; if frequent use of the Sacraments is encouraged; if pious gatherings, in which both are foremost, are promoted, or even newly established. But to accomplish these things, you need helpers, whom the Lord has called to be laborers in His vineyard. Therefore, constantly remind them that it is not permissible for them to be idle, and that it is necessary for them to contribute their efforts to the regulation of the morals of the people. Inquire diligently into their lives, their words, their conversations, their habits: "For," as St. Gregory M. says, "a dirty hand does not wash another, and an eye filled with dust does not see the spot; thus, the person must be righteous who wishes to correct others." Furthermore, pay close attention to the gravity and modesty of their outward conduct. In order that they may be suitable for teaching the faithful, and for properly and duly performing ecclesiastical duties, do not be satisfied with what they have given before they are initiated into the Orders; but take care that those who are initiated never cease to diligently practice their studies of sacred things. As for what concerns...

[*Latin ed. p. 248*]

248. The Encyclical Letter, which the Roman Pontiff, Benedict XII, issued in the Jubilee year of 1725, decreed that "Ecclesiastical Congregations" should be held "once each week," in which, alternately, matters of "rites" and of "conscience" are presented, discussed, and practiced; and this, moreover, We wish to commend to you with the greatest insistence. To other Ecclesiastics, it is fitting to excel in all things, those who surpass in dignity. Therefore, you must carefully consider them, so that the people, who observe them most closely, may not find anything to reproach in them; but let them cooperate with you in counsel and in work for the sake of the ministry, for the edification of the Body of Christ, so that they may truly be called, as the Council of Trent says, "Senators of the Church." In particular, let the care and diligence of the pastors be keenly exercised, so that, as prescribed by the same Holy Synod, they may "unceasingly instruct" the people, and "refreshen" them with the Sacraments, offer "daily prayers and supplications to God for the people," and let them shine forth with "a commendable example of life and conversation, virtues, and moral discipline" to all, and let them demonstrate "the way of salvation"; and finally, let them perform all the other duties prescribed therein. Guard

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the seminary as the pupil of your eye, and those who are growing up in the hope of the Church. The instruction of clerics should be of the utmost concern to you, and be vigilant lest anyone, unless truly called by nature, virtue, and knowledge, be admitted to the Order of the Lord. Nevertheless, consider the advantages of religious families, using the faculties which are granted to you by the Holy Council of Trent, either as Ordinaries, or as delegates of the Apostolic See. Frequently visit schools and colleges of young people, to prevent the poisons of the corruptions of the present age, and to direct all things according to the norms of the most holy discipline. See to it that the nuns, who have vowed themselves to God, diligently perform their duties, and that those girls whom you have taken in charge to be educated and formed, are instructed and trained piously and in the Catholic faith, and that their adornments and garments do not clash with those of the girls who are betrothed to Christ. These are the parts of the office that you must perform concerning the celebration of synods, and the visitation of dioceses, as prescribed by the Council of Trent.

[*Latin ed. p. 249*]

TO POPE LEO X.

24-9. We commend to you, with the greatest earnestness, that these matters, as prescribed by him, be fulfilled with due diligence and religious devotion. Indeed, from this, you will come to know your flock, and you will understand what evils need to be remedied, and what benefits need to be provided. The care of all orders is entrusted to you, but especially the care of the poor, to whom Christ declared Himself sent by the Father to evangelize, and to whom He indeed showed most excellent and singular proofs of His will. Understand well how easily, driven by poverty, all may lose the fruit of God's present benefits. Therefore, use the Church's resources so that you may fulfill the Lord's precept as an example: "And whatever you do, do all for the glory of God." And faithfully provide that which the Church prescribes to the Bishops concerning the use of these goods: let the lamentations of the needy readily reach you; implore for them the wealth of the rich, frequently proposing the precept of almsgiving; and defend them from all oppression and injustice with a manly spirit. Furthermore, your zeal should vehemently condemn the wickedness of usurers, who, as Oalechus says in Romans, exploit and destroy the miserable people with usury, and this evil has greatly increased in these times... (1). Among the poor, we especially commend to your charity those whose poverty is increased by age, sickness, or other misfortunes, such as those who are raising and educating children of both sexes, and those who are receiving the sick and infirm, both with regard to their bodily needs and the needs of the family, and with regard to their souls, which must be carefully attended to. In short: you are pastors and teachers of the people. Therefore, Venerable

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Brothers, it is necessary not only to watch that no one in the flocks entrusted to you suffers incursions from spiritual beasts, but also to nourish them with the food of heavenly doctrine, with admonitions and salutary laws, but especially by example; so that your light may shine before men, that they may see your good works, and glorify your Father who is in heaven. This is of the greatest importance in moving... (1) The same must be said with great severity against the crime of theft, which disturbs society in so many ways and in so many places.

[*Latin ed. p. 250*]

TO THE REVEREND FATHER, LEO, POPE. We strive, so that, in order to silence the wicked words of those who speak unjustly, according to the words of the Apostle: "In all things give thyself an example of works, in doctrine, in charity, in spirit, in faith, in purity," that the word of truth may be unreprovable, so that he who is opposed may have nothing evil to say of you. Thus, it will come to pass that not only will the people see what ought to be done, but that they may actually do it, and that, just as the Apostles, so too you may be lights of the world; that is to say, that, having cleansed men from the stain of sin through you, the integrity of their lives and morals may be preserved for a very long time. These are our desires; trusting in your virtue and your efforts, with God's help, we are confident that we shall achieve this, so that, with errors and vices cast aside, and strengthened by piety, the faithful may put on, as the Apostle urges, "Put ye on therefore, as the elect of God, holy and beloved, the bowels of mercy, benignity, humility, modesty, patience," supporting one another, and giving to one another, just as the Lord has given to us; and above all things, that they may have charity, which is the bond of perfection, which, indeed, unites all Christians together with itself, and preserves virtues, and joins man to God, in which all of man's perfection consists. May you attain this greatest fruit of the holy Jubilee through the merits of Christ Jesus, our God and Redeemer, and through the prayers of all the Saints; may the Father of mercies and God of all consolation, through the same Son, our Redeemer, grant this to us, for it was His own prayer when He said: "Father, I will that they may be one, even as we." With all our heart, we implore the Apostolic Blessing upon you, and we lovingly entrust to your care the flocks entrusted to you.

Given at Rome, near the Holy Peter, on the eighth day before January, in the year one thousand eight hundred and twenty-five, in the third year of Our Pontificate.

[*Latin ed. p. 251*]

251 BY THE MOST HOLY Providence of Our Most Holy Father, the Pope, a letter, an Encyclical, has been written to the Venerable Archbishops and Bishops of the Kingdom of Borussia. To the Venerable Brothers, the Arch-

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bishops and Bishops of the Kingdom of Borussia. PIUS PP. IX. Greetings, Venerable Brothers, and Apostolic Benediction. What we never thought would happen, considering those things which, by common counsel with the supreme authority of Borussia, were established this year for the safety and good of the Catholic cause, has, unfortunately, come to pass in these times. Venerable Brothers, in these regions of yours, where the Church of God enjoyed tranquility, a fierce and unexpected storm has arisen. For, laws which were not long ago enacted against the rights of the Church, and which have afflicted many of the clergy and faithful who diligently perform their duties, have been added to, laws which utterly undermine the divine constitution of the Church, and completely trample upon the sacred rights of the Bishops. And indeed, these laws have given power to lay judges to depose Bishops and others entrusted with the care of souls, to remove them from their dignity and the exercise of their office; many and grievous obstacles have been placed before those who were appointed to exercise legitimate jurisdiction in the absence of the Pastors; Chapters of Cathedrals have been convened to elect Vicars, even before the Episcopal See is vacant, contrary to canon law; and finally, to omit other things, the power has been taken away from the Prefects of the Provinces to appoint even secular priests.

[*Latin ed. p. 252*]

252 ENCYCLICAL LETTER: That those appointed should be, who, suffering for the Bishops, with equal rights in the Dioceses, should preside over the administration of temporal goods, whether they be clerics or laymen, and that these goods should be destined for ecclesiastical use. You know well, Venerable Brothers, what damages and vexations have followed from all these laws, and from the harsh enforcement of the same. We pass over these matters for the moment, lest we increase the common sorrow by mournfully recalling them; but we cannot remain silent concerning the calamities of the Dioceses of Gnesen and Posen, and the Diocese of Paderborn; for having been entrusted to the custody of the Venerable Brothers Miecislaus of Gnesen and Posen, and Conrad, Bishop of Paderborn, and a sentence having been passed upon them, by which they are declared to have been unjustly removed from their Episcopal Sees and authority, the aforementioned Dioceses, deprived of the support of their excellent pastors, have been miserably cast into a burden of grave difficulties and sorrows. And indeed, these aforementioned Venerable Brothers do not deserve to be lamented by us, but rather to be admired and congratulated, since, mindful of the divine words, "Blessed shall you be when men shall hate you, and when they shall separate you and shall reproach you and cast out your name as evil, for the Son of man's sake" (1), they have not only not been deterred from the imminent danger and the severity of the laws, so that they might safeguard the rights and mandates of the Church

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for the sake of their ministry, but they have also deemed it honorable and glorious, as have other most distinguished Bishops of this region, to suffer undeserved condemnation and the penalties of the wicked, for the sake of justice, thus exhibiting an excellent virtue that benefits the entire Church. But although praise is more due to them than tears of pity; nevertheless, the contempt for the Episcopal dignity, the violation of the liberty and rights of the Church, the vexations which not only afflict these aforementioned Dioceses, but also other Dioceses of the Kingdom of Prussia, are such that we, as we offer our complaints against those laws from which so much evil has arisen and from which more is to be feared, in accordance with the Apostolic office which God has entrusted to us, although we are unworthy, and as we seek to vindicate the liberty of the Church unjustly suppressed, by every means possible and by the authority of divine law.

(1) Luke 6:22.

[*Latin ed. p. 253*]

Be it known! POPE K IX. For indeed, We intend to fulfill the parts of Our office, and therefore We publish these letters as an open declaration to all those to whom this matter pertains, and to the entire Catholic world, that those laws are null and void, since they are entirely contrary to the constitution of the Divine Church. For the Lord has appointed sacred ministers to govern in those matters which pertain to the holy ministry; but Blessed Peter, to whom not only do We acknowledge, but also entrust the care of His sheep (1), and therefore those whom the Holy Spirit has placed as bishops to govern the Church of God (2), can be deprived of their episcopal office by no power, however exalted, of this world. Furthermore, it seems to Us that it is unworthy of an enlightened people, and that this will be perceived even by those who are not devoted to particular interests, that these laws, armed with severe sanctions, threatening harsh penalties to those who do not comply, and having a military force ready for execution, often place peaceful and defenseless citizens, who rightly detest them because of the dictates of their conscience, which they could neither ignore nor despise, in a condition in which they are often found, in which are the miserable and afflicted people who are oppressed and burdened by a greater force, which they cannot avert. Therefore, these laws do not seem to be enacted for free citizens, demanding reasonable obedience; but rather, they seem to be imposed as on slaves, in order to extort forced obedience through the terror of force. However, We do not intend that this should be understood as if We consider those who obeyed men out of fear to be excused, much less as if they will escape the judgment of the Divine. Indeed, We condemn those who, supported by the authority of civil power, have rashly occupied parish churches, and are performing the sacred ministry therein, unless they are [repentant]. Moreover, We declare that these and all those who in the future shall intrude themselves into the administration of churches

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with a similar crime, have fallen, and shall fall, into a greater excommunication, according to the sacred canons; warning the faithful to avoid their sacred offices, and not to receive the sacraments from them.

(1) Ioann. XX. 17. — S. August. de iun d. cap. 4.

(2) Act. XX. 28. Admon. Tom. V ILI, fase. L XXXIX.

[*Latin ed. p. 254*]

254 EDICT: They should receive [those who are persecuted], and prudently abstain from any dealings or association with them, lest evil corrupt the untainted mass. Among these calamities, your fortitude and constancy have been efficacious in alleviating Our sorrow. Indeed, Venerable Brothers, the rest of the clergy and the faithful have striven to emulate you in this arduous struggle, and their steadfastness in fulfilling their Catholic duties has been so great, and the praise of each in their own way so remarkable, that it has drawn the eyes and admiration of all, even of those most distant. This could not have happened otherwise: for "how destructive to those who follow is the fall of the leader; but how beneficial and salutary it is when the Bishop, by his steadfastness, offers his brothers in the faith an example to imitate." (1) Would that we could offer you some solace in these difficult circumstances! In the meantime, we hereby declare our firm resolve regarding all that is opposed to the divine constitution of the Church and its laws, as well as regarding the injustice inflicted upon you; and we shall certainly not fail to offer you counsel and timely warnings, according to the circumstances. Let those who are hostile to you know that you, by refusing to render to Caesar what is due to God, will not inflict any injury upon the authority of Regiae, nor will you take anything away from it; for it is written: "It is necessary to obey God rather than men." (2) And let them also know that each of you is prepared to give tribute and obedience to Caesar, not out of fear, but out of a sense of duty to the civil authority and power. Therefore, diligently fulfilling both duties and obeying the order of God, be of good cheer, and continue as you have begun. You have not labored in vain, and you have not been fruitless, because you have had patience and have endured for the sake of the name of Jesus. (3) Consider Him who preceded you in suffering greater things, and who "bore the penalty of death, so that the members of His body might be scattered, that they might flee the favors of the world, and fear no terrors, for the sake of truth." (1)

(1) St. Cyprian, Epistle 4.

(2) Acts 5:29.

(3) Revelation 2:3.

[*Latin ed. p. 255*]

"Adversa diligere, prospera formidando declinare" (1). He who has placed you in this battle will grant you equal strength. In Him is hope; let us submit to Him and pray for mercy (2). You see that what He foretold

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has already happened; therefore, confidently believe that what He has promised will undoubtedly be fulfilled by Him. "In the world, you will have tribulation," He says, "but be of good cheer; I have overcome the world" (3). Confident in this victory, we earnestly implore peace and grace from the Holy Spirit, and we impart to you, to the entire clergy, and to the faithful, the witness of our Apostolic Benediction, entrusted to your care. Given in Rome, near St. Peter, on the 5th of February, in the year 1875, in the 29th year of our pontificate. PIUS PP. IX. (1) St. Gregory the Great, Moralium Regum, Book 1, chapter 3. (2) St. Augustine, Sermon 55. John 16:33.

[*Latin ed. p. 256*]

FROM THE ACTS OF THE ASSEMBLY OF BISHOPS AND REGULARS CONCERNING THE BURDEN OF CONTRIBUTIONS, August 16, 1872. Summary of the matter. Pope Alexander VII, in his Pastoral Office Constitution of April 9, 1657, concerning the Patriarchal Basilicas of the City, among other things, decreed the following: That the Cardinals themselves should strive to attend to the divine services in the churches, "or in basilicas of this kind, in which the Archpriests hold, or will hold, the dignity, and that they should appoint Vicars, grave and worthy prelates, with a salary determined by the aforementioned Archpriests, which shall not be less than half the Archpriestal portion, to be paid fully and without diminution to the aforementioned Vicars, at the established times, each month, by the Carnerarios and the Depositary of the Chapter. However, they shall be obligated to attend the divine services on days prescribed, and to perform the office of Prefect in the choir on other, more solemn days, in those same basilicas. If, on those days, they do not attend the divine service, their portion, as mentioned above, shall be doubled, as would be the penalty for any Canon who would be absent. The Constitutions of the Chapter of the Patriarchal Basilica of Liberian, approved by Apostolic Letters in the form of a Brief on December 22, 1854, repeat something similar: For it is written in chapter 1, § 2: "Furthermore, the Archpriest must appoint a Vicar, with a salary determined by the Chapter for a set time." Also, in § 4, it is written: "The salary of this same Vicar shall not be less than half the Archpriestal portion, according to the Bull of Alexander VII, Pastoral Office, of April 9, 1657." What this portion is, according to the same chapter constitutions, is found in chapter 2, paragraphs 5, 6, and 7, which state: "No one among the canons..."

[*Latin ed. p. 257*]

CONSTITUTIONES. BOOK II. CHAPTER V. ON PREBENDS.

257. The distinction and difference between prebends are established by the Bull of Paul V, dated November 29, 1609; all are commonly adminis-

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tered by twenty canons, who are maintained from the revenues of the vineyards, which are collected annually. A portion of this revenue is assigned to each canon, who is still in the number of canons on the third day before the Kalends of November. The canonical revenue, which, according to the Bull of Pius IV, dated November 20, 1561, is equivalent to the daily distributions, is divided monthly (that is, 25 scudi for each), and also on the feast of the Resurrection of the Lord, and in the month of September, and during the Vigil of the Nativity of the Lord, in addition to the monthly portion, and the canons receive these distributions; and it is permitted to use only the fruits already received and matured, from the revenues of that year, after all burdens and expenses have been deducted, for these (extraordinary) distributions. Therefore, in the Liberian Chapter, the following must be distinguished: prebends, which consist of a fixed amount distributed annually in the month of November; the canonical fruits, which are distributed monthly; and the extraordinary distributions, which are made from the revenues that remain each year. The Cardinal Archpriest receives only the prebends and the monthly canonical fruits, but not the distributions; and the canons claim that this is derived from an ancient custom; and they also claim that the Archpriest's prebend is not included among the canonical prebends, which are seventeen; and that the emoluments of the Archpriest are determined in the Chapter Constitutions, without any mention of distributions. Indeed, in chapter 1, § 4, it is written: "That (the Archpriest's portion) in our Church consists of three hundred scudi annually, in addition to the prebend of twenty scudi, according to the long-established custom." Therefore, having made this distinction from such distributions, it is certain that the Archpriest's portion is a part of the chapter's revenue, and that it is equal to the portion of each canon, namely 300 scudi annually; however, the Cardinals Archpriests.

[*Latin ed. p. 258*]

258 CONCERNING the complete relinquishment of burdens, it was customary for the proper Vicar to relinquish half of his portion, as was sufficient according to the Constitution of Alexander VII; and this was never diminished by reason of the aforementioned Constitution. When, from the Subalpine Government, very heavy tax burdens arose, weighing down the chapter's table, the Canons inquired whether the Archpriestly portion, which is called "aequa" because of the proportion of burdens imposed, should be diminished. Since they differed on the matter, they agreed by common suffrage to propose resolving the matter to the Holy Congregation of Bishops, and the "Synopsis of Discussions."

WHAT IS DEDUCTED FOR THE ARCHPRIEST: It was therefore observed that such an Archpriestly portion, which the Vicar receives as a salary in practice, cannot be considered as a pension; therefore, the Decree "Cum nuperrimis," which concerns only pensions, cannot be invoked.

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Moreover, since in the aforementioned Bull of Alexander VII, no distinction is made, the Archpriestly emolument of the Liberian Basilica does not seem to be of a different nature than the Archpriestly emoluments of the Basilicas of the Lateran and the Vatican; who receive the entire prebend as any other canon. Nevertheless, it happens that the Archpriest of the Liberian Basilica is excluded from the ordinary distributions, and if this accumulation is not exceeded, it is certain that "aequa" assigns 25 scudi each month. From this exception, which, for the sake of brevity, does not discuss the legal proceedings, it seems to follow that: 1. since the Archpriest's prebend is a portion of the common mass, he should not bear all the burdens, since he does not receive all the emoluments; 2. since the Chapter of the Liberian Basilica receives extraordinary distributions, and the Archpriest is excluded from them, except for what happens in other patriarchal basilicas, it is not surprising that he should bear the burden of providing the Vicar with a salary. This exclusion of the Archpriest is considered a true abuse, intended to favor oneself and not for the benefit of others. The observance of,

[*Latin ed. p. 259*]

This exclusion, it seems to me, is contrary to reason and the laws. For if the Archpriest, by virtue of the Alexandrian Bull, is the head and the highest dignity of the Chapter, he certainly ought to participate, like the other Canons, in the common fund; and it is entirely unreasonable that the head should receive a smaller share than others. Nor does any observance, even if it contradicts the title of the Decretals, "ut beneficia sine diminutione conferantur" [that benefits be conferred without diminution], seem sufficient to render any diminution of the Archpriest's portion lawful; for, since it pertains to the common fund by its very nature, it ought to be equal to that of the others; and an observance that contradicts reason and law cannot be considered valid (S. Rota, Decree 319, n. 39, part 11, rec.). Furthermore, in order to introduce any observance, the concurrence of knowledge and patience is necessary from those who may be harmed by it (Rota, Decree 406, n. 7, part 1; Decree 328, n. 6, part 4, vol. 1); therefore, it does not seem possible to validly argue against this in the present case, given that the law remains in force, and that the acquiescence and connivance of predecessors cannot prejudice successors (Sperell, Decree 67, n. 20 et seq.; Piton, Disputationes Eccles., 50, n. 42; Rota, Decree 454, n. 4, part 3, rec.). However, if the actual state of affairs is accepted without reservation, the aforementioned observance is a fact that cannot be divided into a private advantage, but must necessarily be admitted as it is (Cardinal De Luca, De Decimis, Disputation 17, n. 6 and 9). For it would be highly improper to invoke an observance in that which concerns one's own advantage, and to reject it in that which causes harm. It is, without doubt, certain that the Archpriest has received a portion that has been consistently and in a specific and complete quantity (Scut. 300); and although the capitular canons

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have, at various times, suffered increases in the commonly given taxes and ecclesiastical taxes, the Chapter has never deducted anything from this sum. Therefore, just as the observance is considered a legitimate title to exclude the Archpriest from participation in the daily distribution, so it should be equally effective and sufficient to exempt his assigned portion from any diminution, even in light of recent burdens. Otherwise, it cannot be.

[*Latin ed. p. 260*]

260. (c. 1, can. 10). Extraordinary distributions could not be made. For the chapter constitutions clearly determine from whence extraordinary distributions must be taken. Indeed, for these distributions, it is permitted to use only the fruits of revenues already received and matured, which are the remaining revenues of that year, after all burdens and expenses have been deducted. These distributions, therefore, are that which remains from the common fund after expenses have been paid; so that if nothing remains, such distributions would have no place; but it cannot be said that the chapter fund, purged of all expenses and burdens, relates also to the portion of the Archpriest; then, because, since this [portion] is equal to the portions of the other canons, the entire amount must be preserved for the expenses of the common fund; and because the cited constitutions do not distinguish between burdens and expenses, but require that all expenses be paid first, after all burdens and expenses have been deducted. Thus, just as from the aforementioned revenues are paid the land taxes, canons, censuses, and any fixed or contingent expenses that burden the common fund in general, and therefore in particular also for the portion of the Archpriest; so also from those same revenues must be satisfied the special burdens (movable and immovable property). Therefore, the claim and the demand to burden the Archpriest's portion with these burdens appears entirely contrary to the chapter constitutions, which only allow distributions from the revenues of the common fund, after all burdens and expenses have been deducted.

WHAT IS DEDUCTED WITH THE APPROVAL OF THE CHAPTER. On the contrary, it seems that an assignment in favor of the Vicar should be made by the Most Reverend Archpriest; for it is expressly stated in the Bull of Alexander VII that the aforementioned Archpriests should provide a proper salary to them [the Vicars], which word "provide" does not seem to mean merely the simple act of determining the amount of the salary; but rather the burden of assigning it, and of providing it, which is more closely related to expenses; for such is the meaning of the term in Roman law, in the formulas "constitutio pigni L. ex iure §. 1. ff." and others.

[*Latin ed. p. 261*]

Concerning... L... it is stated in Canon Law, Code of Canon Law, book 13, title 5, sections concerning ecclesiastical property, that it is permissi-

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ble to establish a dowry. And in this sense, the aforementioned Bull is interpreted by the Chapters of the Patriarchal Basilicas of Lateran Palace and Vatican, and also by the Liberian Basilica, which to this day do not return any salary, nor has the Vicar ever demanded it from the Chapter. Therefore, the treasurers and depositaries designated by these Chapters appear as individuals appointed for the purpose of payment; who do not pay the salary to the Vicar by right and in their own name, but in the name and on behalf of the Most Reverend Archpriest. Consequently, the controversy in which it is questioned whether the Vicar's assignment should or should not be subject to any reduction, does not appear to pertain to the Chapter; which only wishes to examine its own accounts concerning the assignment to be rendered to the Most Reverend Archpriest, without in any way concerning itself with the eventual rights of a third party to whom it must return the same portion. Furthermore, certain aspects related to this controversy must be considered. Indeed, the Most Reverend Archpriest has a strict, equal, and, so to speak, perfect communion of goods; therefore, just as common things are common benefits, so also common burdens should be common; and natural equity does not allow that some should suffer the consequences emerging from a situation, while not all of the community do. It might be objected that the Most Reverend Archpriest cannot be burdened with these obligations unless he himself is first admitted to receive extraordinary distributions; for these constitute the exclusive emolument of the Canons through an unforgettable observance; to which a separate judgment should be instituted to be questioned. But the treasurers of the Chapters believe that they can see a legitimate basis for such an observance in the difference that exists between the Most Reverend Archpriests of the three Patriarchal Basilicas with regard to the granting of smaller benefices and chaplaincies; concerning which Riganti §. 3 speaks, and the Apostolic Chancery, from N. 166 to 305. In the Lateran Basilica, the property and substance of the right conferred are indivisible between the Chapter and the Cardinal Archpriest.

[*Latin ed. p. 262*]

2G2 CON. U t . l T . x , K ! S ONERUM: The presbyterate, and through alternating weeks, is divided the exercise of collation. In the Vatican: the property and the exercise of collation of benefices is divided each week between the Chapter and the Cardinal Archpriest. In the Liberian Basilica, although the right and the exercise of conferring benefices are equally divided, so that the Chapter and the Archpriest are two distinct bodies, which have nothing in common during the other's week, nevertheless, the exercise of such a right there constitutes a special feature, which is not found in the Lateran Palace and the Vatican; for the turn between the Em. Archpriest and the Chapter does not take place during alternating weeks, but devolves for two weeks to the Em. Archpriest and for one week to the

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Chapter, by a Brief of Pius IV, dated December 21, 1561. Furthermore, it is known in law that collation and the right to turn are of benefit. *Rota Dec. 603. N. 2. part. 4. divers. Romana clericatus 13. Maii 1695 cor. Priolo.* Indeed, Lagunez demonstrates that this benefit is more valuable than any monetary emolument, in his treatise on benefits, part 1, chapter 31, §. 1. N. 2 1. "These collations and presentations are to be esteemed for great profit and benefit; for with them not only is the will simply fulfilled in the election of persons, but also the obligations of relatives, family members, and friends are rewarded; hence, those who are prevented from fulfilling their will in such elections and other acts, suffer a great loss," as Bartolus noted. Therefore, if the Em. Archpriest of S. Mariae Maioris does not receive the daily distributions that are received by the Archpriests of the other aforementioned Patriarchal Basilicas, he nevertheless has a double turn in the collations, which should be considered equivalent to the nobility and the more abundant benefits that he enjoys. However, nothing prevents the portion of the Archpriest from having been reduced in the past, nor by that burden which was commonly called the *tassa del Clero*; for such a reduction is a matter of the *merariorum* [ecclesiastical revenues], made without any approval of the Chapter, and never approved by a chapter resolution; which, therefore, cannot create any rights or obligations. Furthermore, the tax imposed on the entire Clergy was barely sufficient.

[*Latin ed. p. 263*]

c, \t. : \ : i;¡«>\¡s o", r Î 5 5 attinge bat soufatorum 15; quod ab administratoribus Massae capitularis negligi poterat, quia parum pro nihilo reputatur. Sed aequitas haud sineret ut indulgentia habita pro oner parvo sit causa gravandi Capitulum pro portione Archipresbyteri omnibus oneribus gravissimis quae ab actuali Gubernio imposita sunt, et in posterum imponentur. His aliisque praenotatis propositum fuit eno'andum B) n foi u m « An portio canonica Emi Archipresbyteri pro tempore » pati debeat decurtationem pro oneribus superadiunctis (di » niano morta e di ricchezza mobile) in casu ? » RESOLUTIO . S. Congregatio E E . et R R . die 1 6 Aug. 1 8 7 2 , ciusa cognita respomhr; censuit: Negative. EXINDE COLLIGES I. Emi Archipresbyteri portionem de communi Massa, quam in facto percipit tamquam salarium, non posse considerari veluti pensionem, pro qua invocare liceat Decretum Cum nuperrimis, quod ad pensiones proprie dictas tantum refertur. II. Consuetudinem, propter quam Emus Archipresbyter excluditur a distributionibus extraordinariis, quas ceteri Canonici percipiunt, constituere emolumentum Emi Archipresbyteri in tali conditione, qua incapax fit cuiusvis augmenti ; proindeque, dum conino lis non giudei, nec onera sentire debere.

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[*Latin ed. p. 264*]

26. From the Sacred Congregation for Indulgences, a petition, presented by a pious person on the centenary of Saint Bonaventure, Doctor of the Church, has been offered to His Holiness Pope Pius IX, requesting that a certain indulgence be granted to all those who recite the following prayer in any language.

The most devoted prayer of Saint Bonaventure, Bishop and Cardinal, Doctor, taken from the work "Stimuli amoris":

Lord, Holy Father, Almighty, eternal God, through Your generosity, and through the merits of Your Son, who endured suffering and death for me, and through the most excellent sanctity of His Mother, and through the merits of the Blessed Francis, and of all the Saints, grant to me, a sinner, and unworthy of all Your benefits, that I may love only You, that I may always thirst for Your love, that I may constantly have in my heart the remembrance of the benefit of the Passion, that my misery may be recognized, and that I may desire to be free from all that is base and contemptible: nothing may grieve me except my sin. Amen.

On April 11, 1874, the Supreme Pontiff, Pope Pius IX, wrote with his own hand: "May God bless you in your good works, and may He grant you one hundred days of true indulgence, to be gained once a day by all the faithful who devoutly recite the aforementioned prayer."

PIUS PAPA IX.

The present rescript, written by the hand of His Holiness, was exhibited in the Secretariat of the Sacred Congregation for Indulgences and Sacred Relics on this day, April 22, 1874, in accordance with the form of the Decree of the same Sacred Congregation of April 14, 1856.

In witness whereof, etc.

Given in Rome, from the same Secretariat, on the day and year as above.

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Dominicus Sarrn, Substitute.

[*Latin ed. p. 265*]

From the Sacred Congregation of Rites. Decree concerning the Beatification and Canonization of the Venerable Servant of God Aloysius Mary Baudouin, Founder of the Congregation of the Sons of Mary Immaculate, and of the Society of the Ursulines of Jesus, commonly known as De Chavagnes.

Whereas, on the Ides of November in the year 1873, the Most Holy Pope Pius IX, with paternal benevolence, ordered that an examination be made in the Ordinary Congregation of Sacred Rites, without the intervention and vote of the Consultors, concerning the fame of sanctity, life, virtues, and miracles of the aforementioned Venerable Servant of God, Aloysius Mary Baudouin, at the urging of the Reverend Father Gustavo Canonico Gallot, Honorary Chamberlain of the same Most Holy Pope and Promoter of the Cause.

Furthermore, the Eminent and Reverend Cardinal John Baptist Pitra proposed the following question to be considered in the Ordinary Congregations of Sacred Rites held at the Vatican on the aforementioned date: "Does it appear that the Apostolic Process, constructed upon the fame of sanctity, life, virtues, and miracles in general of the aforementioned Venerable Servant of God, is valid and relevant in the case and for the purpose under consideration?"

The Eminent and Reverend Fathers entrusted with the preservation of the Sacred Rites, after mature deliberation, and having heard the voice and written opinion of the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, judged it fitting to respond "Affirmatively."

On the 28th of November, 1874.

These matters, faithfully reported by the undersigned Secretary to the Most Holy Pope Pius IX, were approved and confirmed by His Holiness.

On the 3rd of December, in the same year.

C. The Bishop of Ostia and Velletri, Cardinal Patrizi, Prefect of the Sacred Congregation.

D. Bartolini, Secretary of the Sacred Congregation.

[*Latin ed. p. 266*]

FROM the Penitentiary Apostolic "APOSTOLICAE SUPER DUBIIS" concerning the Jubilee for the remission of sins. DECLARATIONS. It is clear that the Encyclical Letter (1) of Our Most Holy Lord Pope Pius IX, under the title "Divina Providentia," dated December 24, 1874, was conceived with clarity, so that no ambiguity seemed to exist. Nevertheless, certain doubts arose which were presented to the Penitentiary Tribunal to be resolved by various local Ordinaries. This Tribunal, always concerned

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for the good of souls and spiritual matters, gladly accepted the presented doubts and, on January 25, 1875, issued the following letter. The Sacred Penitentiary, obeying the mandates of His Holiness Pope Pius IX, concerning petitions presented by certain local Ordinaries to the Holy See, on the occasion of the Jubilee, which was announced on December 24 of the past year, declares the following, by Apostolic authority: 1. Lest any of the faithful be hindered from obtaining the Jubilee due to a lack of churches to visit, His Holiness grants to the local Ordinaries the faculty, in those places where this aforementioned lack of churches is verified, to designate a smaller number of churches, or even just one, if only one church exists, in which the faithful of other churches may fulfill their visits, visiting these or that one repeatedly and at distinct times, on the same natural or ecclesiastical day, until the complete number prescribed in the Apostolic Letters is fulfilled. 2. Furthermore, the same Holiness grants that, during the Jubilee, the faithful who are properly disposed may also be absolved from the crime (1) [Referenced on page 18 of this volume].

[*Latin ed. p. 267*]

SECTION CCLXVII. Concerning heresies; however, a firm obligation exists to abjure errors or heresy, to repair scandals, etc., according to the law. 3. It declares that, by virtue of this Jubilee, one can only be absolved from censures and reserved cases once, and likewise, the indulgence of this Jubilee itself can only be obtained once; however, the indulgences granted by the Holy See, and expressly not suspended or revoked, remain in force. 4. It declares that the precept of Easter cannot be satisfied by a single Confession and Communion, nor can the Jubilee be obtained at the same time. 5. Confessors cannot be absolved who have absolved a complicit [person]. 6. To the Ordinaries of Italy, it is declared that, in this present Jubilee, the resolutions of doubts, published by the Holy Penitentiary on June 1, 1869, are also in effect (1), except for the resolution of doubt under number 14; for, as stated above, the indulgence of this present Jubilee can only be obtained once. Contrary provisions notwithstanding. Given in Rome, in the Holy Penitentiary, on January 25, 1875. ANTONIUS M. CARD. PANEBIANCO, Major Penitentiary. LAURENTIUS, Canon of Peirano, Secretarius. To those Bishops to whom these matters have not been clearly explained, some other doubts have been presented to this Holy Tribunal by various local Ordinaries, which are referred to their resolutions as they pertain. I. Can public oratories be included in the number of churches to be visited? Response: Affirmative, provided that the oratory is dedicated to public worship and that Mass is regularly celebrated therein. II. Is it necessary, and is it sufficient, that the faithful leave [the church] and then re-enter the same designated church, in order to distinguish the number of visits? Response: Affirmative. III. Can the Ordinary designate different altars within the church, or crosses erected or to be erected in the fields, as the places to be visited

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instead of the church itself? (1) See, if you wish, these kinds of resolutions listed in Volume V, page *?, S. hai, in the Ephemerides.

[*Latin ed. p. 268*]

268. Questions and Answers concerning the Jubilee. Based on the Encyclical "Gravibus Ecclesie" and the Penitential Regulations of January 25, 1875. IV. During the Paschal season, is a single Communion and a single Confession sufficient to gain the Jubilee? Answer: To gain the Jubilee, a distinct Confession and Communion are required, separate from the Paschal Confession and Communion. V. Do the faithful who accompany or follow Chapters, Congregations, and Confraternities during their processional visits to churches enjoy the same indulgences granted to those Chapters, Congregations, and Confraternities? Answer: After considering the matters presented, the Penitentiary, with special and express Apostolic authority, responds: The Indulgence granted in the aforementioned Apostolic Letters to the same Congregations and Chapters can be applied to the faithful who, with Chapters, Confraternities, Congregations, etc., or with their own Parish Priest or another priest appointed by him, visit churches processionaly, in order to gain the Jubilee. VI. In other Jubilees, the faculty of dispensing from vows is often granted; in the present case, however, only the faculty of changing them is granted; can it be understood that, even in this case, the faculty of dispensing from vows has also been granted? Answer: No. VII. In the Apostolic Letters, the faculty of dispensing from the prescriptions regarding visits to churches is granted for those who are infirm, in prison or captivity, or who are detained by some bodily infirmity, or by any other impediment; is it legitimate to consider rural inhabitants, whose dwellings are far from any church, to be subject to such an impediment for this purpose? Answer: Sufficient provision is made in the Encyclical. VIII. Since four visits to the same church are prescribed to be made on the same day; is it necessary to leave the church after each visit in order to distinguish these visits from each other; or is it sufficient, while remaining in the same church, to move from one place to another, or even simply to stand up, as is commonly done for the Stations of the Holy Cross? Answer: It is necessary to leave the church.

[*Latin ed. p. 269*]

From the HOLY CONGREGATION of the HOLY ROMAN CHURCH, for the Inquisition. Decree, Thursday, January 13, 1875. The Supreme Sacred Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, for the defense of the Christian Republic against heretical perversity, on Thursday, January 13, 1875, condemned and proscribed, and ordered to be added to the Index of Prohibited Books, the following works.

I. *De Sangue purissimo e verginale della Madre di Dio Maria SS.* – A

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Doctrinal-Ascetic Treatise. Naples, 1863. The author commendably submitted and disapproved of the work.

II. *Del Sangue Sacratissimo di Maria* – Studies to obtain the feast day of the same. Perugia, 1874. The author commendably submitted and disapproved of the work.

On the same day and Thursday, the Most Holy Lord, Our Pope PIUS IX, by Divine Providence, having heard the report concerning the above, together with the opinion, in the same audience, given by the Most Reverend Fathers, Cardinals, in their presence, confirmed the decree and ordered it to be promulgated. Furthermore, the same Holiness decreed that, through this promulgation, others also, namely writers, who sharpen their minds on such and similar arguments, which seem novel, and who, under the guise of piety, seek to promote customary religious practices even through periodicals, should be warned to desist from their purpose, and to understand the danger that lies in leading the faithful into error, even concerning the dogmas of the Faith, and the acts thereof.

[*Latin ed. p. 270*]

DECREE concerning the offering of religion to those who despise it, in order to diminish the purity of the Catholic and true faith. Given in Rome on the 28th of January, 1875. Fr. Vincentius Leo Sallua, of the Order of Preachers, General Commissary of the Holy Roman and Universal Inquisition. Iuvenalis Pelami, Secretary of the Holy Roman and Universal Inquisition. *[Space for Signature]* In the place of the Seal, on the 29th of January, 1875, I, the undersigned, Master of the Curia, testify that the aforementioned Decree has been affixed and published in Rome. Philippus Ossani, Master of the Curia.

[*Latin ed. p. 271*]

271 FROM THE HOLY CONGREGATION OF BISHOPS, CONCERNING THE EXISTENCE OF CONFRATERNITIES. Dated August 1873. In the year 1749, a certain Vincent Alossandrello, a Priest, founded within the Church of St. Blaise in the city of C., a Congregation of Charity, for the purpose of burying the bodies of the poor, and established statutes for the proper conduct of this work, among which were the following: that all and each who wished to give their name to the society were obligated to bury the bodies of the poor free of charge, bringing garments similar to those of other Confraternities (commonly called "il sacco col cappuccio"); and that those who lacked such garments should carry an image of the Blessed Virgin Mary, known as "of the Seven Sorrows," upon their breast. In other chapters, it recommended the cult of the Mother of God of the Seven Sorrows, established a solemn feast day, prescribed processions, and a public collection for alms. Such statutes were approved by the Bishop during a Visitation, with these words: On September 12, 1750. With the

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prior consent of the Reverend Archpriest, we confirm the aforementioned statutes of the Congregation of Charity for burying the bodies of the poor; which we wish to be established and carried out in some chapel belonging to the mother Church (although elsewhere it is read as the Church of St. Blaise), to be designated by the Archpriest himself; reserving to ourselves and our successors the rights of visitation, addition, deletion, of reforming anew, and of interpretation. It happened that certain individuals from the Collegiate Church of the Most Holy Annunciation in the same city, on June 10, 1751, obtained letters from the General Prior of the Servants of Mary, for the erection of a Confraternity of the Seven Sorrows of the Blessed Virgin, with the consent of the Ordinary, and provided that another similar one had not yet been established in the same or another place within a distance of three thousand paces. *Compiemur facta.*

[*Latin ed. p. 272*]

272. For the benefit of the faithful, desiring that, through this participation in spiritual graces and indulgences, the faithful may be more and more aroused to devotion and piety, We, with the authority granted to Us by the Supreme Pontiffs, by this present document, grant permission and the faculty, with the consent of the Ordinary, to establish said Confraternity in the aforementioned place and in the Collegiate Church of the same place, under the title of the Most Holy Annunciation, provided that another similar one has not yet been established in the same or a nearby place within three miles. This document was ordered to be observed by the Royal Councilor of the Treasury, concerning only the granting of indulgences. However, after hearing those interested, that is, the Parish Priest and the Prefect of the Congregation of Charity, the Archbishop issued a decree, by which it was permitted, according to the terms of the diploma graciously granted by the General of the Servants of Mary, for the faithful of both sexes to enroll in the Collegiate Church of the Most Holy Annunciation in the Confraternity of the Seven Sorrows of the Virgin. The Dean and his successors, for the time being, were given the power to bless the scapulars and crowns with the application of indulgences, and to establish an altar of the Most Blessed Virgin under the title of the Seven Sorrows in said church, where the Rosary of the Sorrowful Virgin Mary would be recited, either on any Friday of the week, or on all days of feasts, especially on Sundays, but without the faculty of performing processions or any other sacred function.

From these two institutions, a great rivalry arose between the Congregation of Charity and the Most Holy Annunciation, as the confreres of both societies claimed to belong to the true Confraternity of the Seven Sorrows, and therefore asserted their rights and privileges, and usurped a name. Complaints were therefore presented more than once, both in the Episcopal Curia and in the civil court, in which a judgment was rendered in favor of the Congregation of Charity. However, after various events, the

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Archbishopric finally approved both Congregations, but denied the Society of the Most Holy Annunciation the faculty of performing processions or other public functions.

[*Latin ed. p. 273*]

THE EXISTENCE OF THE CONFRATERNITY: Its 273. The members of the Brotherhood of the Most Holy Annunciation, not agreeing with the judgment, presented the cause to the Congregation of the Holy Council; and this was explained by the advocates of both sides. WHAT HAS BEEN SAID CONCERNING THE BROTHERHOOD OF THE MOST HOLY ANNUNCIATION. The defender of this Society attempted to demonstrate two things: 1. That the Congregation of Charity existing in the parish church is not a true Confraternity of the Blessed Virgin Mary, Sorrowful. 2. That this is truly and properly a pious Society existing in the Collegiate Church of the Most Holy Annunciation. He contends that the first point can be proven from the fact that any pious Society will be named according to what it denotes, and that a decree of ecclesiastical authority establishes it and intends it to be so; for it is not credible that a Society should be called by a name different from the end it has set before itself, or that a decree of the Church, which is either the principal or the unique cause by which a pious Society acquires its proper form, should have considered an external purpose rather than the internal purpose of the Society, and have wished it to be called by that name. But it is certain that the sodality of the parish church was established under its own and singular title, the Congregation of Charity. Therefore, if it happened to be called "of the Seven Sorrows," this should not be understood in its proper sense, but in a broad and improper sense; namely, that the Congregation was established under the patronage of the Sorrowful Virgin. But the nature of sodalities is better understood from their proper end and their own laws. It is manifest from the law of foundation that the Congregation of Charity was established in a chapel of Saint Blaise; whereas, the Congregation of the Most Holy Annunciation ought to have been established, and was established, with an altar under the title of the Seven Sorrows; that it should consist of faithful of both sexes; that the former should be obligated every Saturday and on every feast day, especially on Sunday, to recite the Rosary of the Seven Sorrows, and once a year, either on the third Sunday of September, or on the Sunday of the Passion, to celebrate the Feast of the Seven Sorrows; whereas, the brothers of charity are obligated to make confession every month, and to recite the Rosary of the Seven Sorrows only on the first day of Friday.

[*Latin ed. p. 274*]

274. [REGARDING] THE EXISTENCE of any confraternity, it is necessary each month, and on the feast of the Blessed Virgin Mary, Seven Sor-

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rows, to perform the Holy Communion. However, those acts performed in honor of the sorrowful Virgin within the Society of the Annunciation are more efficacious than those performed in a charitable sodality; therefore, the latter should not be called a true Confraternity of the Seven Sorrows. Who can deny that a true Confraternity of the Seven Sorrows cannot be established without the authority of the General Superior of the Servants of Mary? (1) But the charitable sodality neither possessed nor sought such authority; therefore, what reason can be given for calling it a Confraternity of the Sorrowful Virgin? Nor could this lack of authority be remedied or corrected by those apostolic letters by which indulgences were granted to it; for the Pope granted indulgences because he believed in the existence of a true confraternity; but since, in fact, it did not exist, the entire arrangement was flawed. Furthermore, the intention of the Popes in granting indulgences has no influence on the establishment of any pious society that is entirely based on legitimate foundations, and not on privileges or special graces obtained from the Holy Father (2). To further demonstrate, according to the point at issue, that the sodality existing in the Church of the Annunciation is not (1) The Advocate cites Ferraris, *Bibliotheca Canonica*, verb. *Confraternitas*, Art. 1, No. 26. But in that place, the author does not speak of the Confraternity of the Seven Sorrows, but of the Confraternities of the Holy Rosary, of which he says: 1. Innocent XI, in his Constitution, confirmed and validated all and each Confraternities under the title of the Holy Rosary, in any place established and existing, even if their canonical erection and institution from the beginning do not appear. 2. Regarding the two following doubts: 1. If, unknowingly to the General of the Order of Preachers, a Confraternity of the Holy Rosary is established by the Ordinary, do the confraters themselves enjoy the indulgences granted to them in the Apostolic Brief? 2. Do they also enjoy other indulgences granted in the same Apostolic Brief, which are not expressly mentioned, but which are known to have been granted to other Confraters of the Holy Rosary by various Popes? The Holy Congregation of Indulgences responded negatively to both. 3. However, it was subsequently decreed that Confraternities of the Holy Rosary should not be established otherwise than by first obtaining the necessary authorizations from the General of the Order of Preachers. (2) These graces would only influence the establishment if the invalidity of the establishment is explained in a written petition, and if the Pope is requested to remedy any defects, and at the same time, to grant indulgences. In this case, if the Pope grants indulgences, even without mentioning the remedy for the defects, he is considered to have remedied them, because it is not considered proper to grant special graces to a society that does not exist.

[*Latin ed. p. 275*]

EXISTENTIAE CON RATERNIÏ ATIS 27 3. The pious society, but a sister and unique Confraternity of the Sorrowful Virgin (1) first presents letters

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from the General of the Servants of Mary, in which he grants the faculty of establishing a Confraternity in the Collegiate Church of the Annunciation; the General, however, having granted the general faculty according to the request of those who asked for the Confraternity properly called, and not a bare society; and henceforth the words must be understood according to the common usage of speech. In the Liber of books, ff. de legat., the Ordinary, in the executive decree of January 4, 1752, did not take anything away from these letters, but rather ordered them to be fully executed. To this, statutes immediately followed, in which the method of reciting the Rosary of the Seven Sorrows is prescribed, and an altar is erected to the sorrowful Virgin, on certain days the Rosary is recited, and the feast is celebrated by the confraternity; therefore, nothing was lacking of those things which are essential in the erection of a Confraternity. Nor does it affirm that it is disturbed by the difficulties proposed by the opposing society, namely that the Confraternity of the Annunciation lacks statutes, and has not been approved by secular authority. For the statutes are not lacking; and that it lacks the approval of the Ordinary does not harm, since it must be presumed that it is so, from the existence of this confraternity for more than a hundred years; and this presumption is very valid, from the fact that the Bishop has resisted the attacks of the opposing Congregation, and has protected the Confraternity of the Annunciation. Furthermore, consent can be presumed from the authority of Cardinal De Luca, alienationes, disput. 2, n. 2-3, and Pitonii disput. (1). Ursa, in Tom. VIII, Part. 1, Di. scept. XIII, n. 9, places this distinction between a Confraternity and a Congregation: Confraternities are those whose members have special banners and their own insignia, are obliged to wear habits, and to participate in processions and other sacred functions of their own Confraternity; Congregations, on the other hand, are certain groups of people who assist each other, who privately, but with the permission of the Ordinary, gather in a particular and determined place, which is not a public church, and there at certain times confess their sins, and receive the Sacrament of the Eucharist, and also hear exhortations and admonitions from a spiritual father, who instructs them in matters concerning spirituality; these never appear in public processions, nor do they use habits or special clothing.

[*Latin ed. p. 276*]

276 f. EXISTENTIAK CONF (AHItrvI TATÍS eccl. 115. n. 22. (1). Given that the aforementioned Confraternity observes statutes, this does not constitute an impediment, because the absence of statutes does not suffice to argue for the non-existence of the Confraternity, as testified by Lucidi in *De Visitat. SS. LL.*, volume 2, page 448, § 140. (2). What, then, is alleged regarding the lack of approval by 'lay authority,' when this confers nothing in matters canonical? And, given that it confers something, one must certainly presume that it stems from an observance of more than a hundred

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years? Therefore, the Congregation of *Adversa* is neither, nor can it be, a true and genuine Confraternity of the Seven Sorrows, firstly because it was established under the title of a Congregation for the burial of the bodies of the poor, and secondly because it was not established by a regular Prelate who had the power to do so; on the contrary, the one that it seeks to protect *is* a true Confraternity of the Seven Sorrows, because it was established by a legitimate Prelate, and confirmed by the Ordinary, because it established its own rules, and exercised the works proper to its institute, preserved its own rights, and protected itself from those who would disrupt it.

(1) The Cardinal of *Lucca*, in the aforementioned passage, speaking of the Constitution of *Urban* VIII, which removes presumed approval due to the passage of a very long time, but preserves the observance of a hundred years, says: "At first glance, it would seem necessary to consider the time when the Constitution was issued, so that at that time the centennial observance would exist, which it preserves, according to the nature of preservation, which is not to give or take away, but to conserve what it finds in its existing state... and consequently, it presupposes a subject that already exists and is capable of being preserved, which cannot be said if, at that time, the centennial period had not elapsed, because what does not exist cannot be preserved." Pitonius, in the aforementioned passage, states: "It is presumed that the consent of the Bishop exists due to the observance, especially in matters pertaining to the cathedral church and its Chapter, with which it is constantly associated and forms a single body," as Mascardus, Lambertinius, etc., testify. Indeed, when it is a question of a centennial observance, it is not presumed that it has been ratified and approved by all the Bishops at the time, but rather, the presumption of apostolic approval is also introduced, since the centennial observance implies a better title in the world, and consequently, a confirmation of the statutes made in a specific form by the Apostolic See, as the Rota has often affirmed.

(2) Furthermore, the words of one author, in the aforementioned passage, state: "If it should happen that the Sacred Congregation of Bishops and Regular Canons understands that the statutes in the sodality in question either do not exist, or that those that exist suffer from some serious defect, it does not fail to order that they be completed, or corrected, and amended, as I have seen prescribed in several cases."

[*Latin ed. p. 277*]

EX 'S I...NiiA.. 277 (0 \ F ¡ H. üMIA ' JfS EA QUAK PRO CONGREGATIONIS CHARITATIS DICTA SUNT. The Defender of the Congregation of Charity presented a defense in the two-chambered court of the Church; and he spoke first, 1° concerning the object of the present question, 2° concerning the right of the Brotherhood to exist under the title of the Sorrowful Virgin, commonly called "dell'Addolorata." Against the opponents, however, he endeavored to demonstrate 1° the defect of the erection, 2° the

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impossibility of its existence, 3° that it should not be aided by them. To the first point, therefore, he said that the object of the present question could be nothing other than the existence of one or the other of the contending brotherhoods; for it is impossible that both should exist simultaneously, since each strives to present documents to prove its own existence, which, if one is admitted, necessarily excludes the other. Therefore, even if the Brothers of the Annunciation were to declare themselves content with coexistence, such coexistence would always remain impossible, since in the same place two brotherhoods of the Seven Sorrows cannot exist, either according to the dispositions of pontifical law, or according to the General Statutes of the Servants of Mary. He clearly demonstrates that the Congregation of Charity has the full right to exist from the Bull of Clement VIII, which begins: "Quaecumque a Sede Apostolica..." (Whatever things...).

(1) In the parts concerning the Bull issued by Clement VIII on December 7, 1604, of the pontificate, an. XIII, §. 2. Concerning those (that is, the bad customs introduced within the brotherhoods themselves, due to the negligence of superiors or other causes), we, desiring to look with paternal charity towards all the faithful, in accordance with the office committed to us by apostolic concern, decree by this Constitution, which shall remain forever valid, that henceforth, both in this beloved city of ours, and in other cities and places throughout the Christian world, regular orders, religious congregations, and institutions (in which...

[*Latin ed. p. 278*]

278 IT IS ESTABLISHED that the Congregation of Charity obtained the consent of the Ordinary before its founding, and that there was no other similar institution at that time; therefore, it was legitimately founded, and it possesses full legal standing, and ought to continue to exist. (To the Religious Orders and to all other churches and colleges, the faculty has been granted to erect and establish Confraternities of the Laity), and also to Archconfraternities and congregations of any nation, name, and institution, and in any churches, houses, and chapels, whether of the laity or, as is preferred, of any religious orders, congregations, and regular institutions, whether erected and established by ordinary or apostolic authority, or otherwise introduced; (to whom the power has been granted by the Roman Pontiffs, or by Us and the Apostolic See, to erect and establish other Confraternities and congregations, and to incorporate them, and to grant to them privileges, indulgences, faculties, and other spiritual graces and favors). Masters, priors, superiors, rectors, governors, prefects, primicieries, prelates, custodians, guardians, prefects, administrators, and other officials, or superiors of whatever name, of religious orders, congregations, and institutions, may erect and establish only one confraternity and congregation, with the consent of the Ordinary of the place, and with his testimonial letters, in which the piety and the works of Christian charity that

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the confraternity and congregation seek to promote are commended, in their churches and colleges, and in those of others. § 3. Furthermore, in each city, town, or place, only one confraternity and congregation may be erected, provided that it has been previously erected by apostolic or ordinary authority, and is not incorporated into any other order, congregation, or institution, of the same or another nation, name, and institution, with the prior consent of the Ordinary of the place, and with his testimonial letters, in which the piety and the works of Christian charity that the same confraternity and congregation seek to promote are commended.

[*Latin ed. p. 279*]

CHAPTER XXVII.

Concerning the privileges of confraternities.

1. It is not lawful to infringe in any way what is stated here, because what is being discussed is the Congregation of Charity for burying the poor, and not a true confraternity; for in a confraternity, the name itself implies the gathering together of those who are devoted to piety and the works of Christian charity, and who can add to and associate with this group.

2. To this confraternity or congregation, whether newly established, or one being founded, or one being incorporated, only those privileges, indulgences, faculties, and other spiritual graces and benefits which are specifically granted to the order, religious institute, or foundation that establishes, founds, or incorporates it, or to the Archconfraternity or congregation to which it is affiliated, may be granted, and not those which have been granted to it in any way by extension or communication, and these indeed must be communicated expressly and specifically, and not under a general form of words, or by way of example.

3. The statutes for the governance of orders, religious institutes, and foundations, or of Archconfraternities and congregations, which are to be established, founded, or incorporated, and those concerning the granting of privileges and other benefits, may not be issued unless they have first been examined by the diocesan bishop and approved for the particular locality; nevertheless, they shall always remain subject to the decrees of the same bishop, and to his moderation and correction in all things.

4. Furthermore, we wish and order that the aforementioned orders, religious institutes, and foundations, as well as Archconfraternities and congregations, diligently observe the specific formula for establishing, founding, incorporating, and communicating, which we have most recently approved, according to which privileges, indulgences, faculties, and other spiritual graces and benefits are specifically and expressly granted to the aforementioned orders, religious institutes, and foundations, as well as to those who establish, found, or incorporate them, or to the Archconfraterni-

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ties and congregations to which they are affiliated, and not by communication, nor...

[*Latin ed. p. 280*]

280. The existence of confraternities can sometimes conflict with the conditions for their establishment, if, indeed, what is done in a certain congregation reveals the confraternity. For, according to Capon, Deept. II, ch. 276, n. 7, as mentioned above, confraternities and congregations, for which they are established, instituted, and aggregated, and with which communications are made, can, in their own right, enjoy privileges, indulgences, and other spiritual benefits, as well as other grants, so that the ministers and officials, and others mentioned, of the established, instituted, and aggregated confraternities and congregations, with which communications have been made, may, after prior recognition by the local Ordinary, who, with the advice of two members of the same chapter of his church, shall determine to promulgate them according to the decree of the sacred Council of Trent, be able to publicly announce them at the proper times.

§. 7. Furthermore, the ministers, officials, and others mentioned above, shall be granted the power to receive alms and other offerings of Christian charity, according to the manner and form prescribed by the local Ordinary... The alms thus collected should be diligently applied for the repair and adornment of churches... or for other pious purposes, at the discretion of the respective local Ordinaries, so that all may understand that the treasures of the heavenly Church are opened to the faithful, not for the sake of gain or profit, but for the sake of promoting piety and charity, through the benevolence of the Apostolic See.

§. 10. Finally, we decree and ordain that confraternities and congregations, wherever they exist, which have been established and instituted by any authority, and with which the aforementioned communications have been made, and which have been aggregated to any of the aforementioned orders, religions, institutes, or archiconfraternities and congregations, shall, respectively, be subject to the orders, religions, and archiconfraternities.

[*Latin ed. p. 281*]

281. 4. A ”brotherhood” is a congregation of many men united by a common purpose to perform works of piety; and this definition perfectly suits a sodality of charity, since in it, works of piety are performed through the means of a sodality. Indeed, in the first chapter of the statutes, it was not explicitly stated that the sodality was to be established in the form of a brotherhood; nevertheless, it is certain that the brotherhood has from the beginning held this character, and the brotherhood was called a ”brotherhood” by Benedict XIV in the Brief of Indulgences. The brotherhood has been maintained by ecclesiastical and civil authorities for a period of 120

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years.

Furthermore, fraternities and congregations are required to obtain, within one year if they are in Europe, and within two years if they are outside of Europe, from the date of publication of these present documents in the Roman Curia, the necessary letters for new erections, institutions, communications, and aggregations, according to the form most recently approved by us; otherwise, after the expiration of said time, all erections, institutions, and any communications of privileges, faculties, etc., shall be considered null and void, and revoked and abolished by their own force.

Moreover, in a similar Constitution, Clement VIII decreed: "Brotherhoods must maintain the formula approved by the same Pontiff."

1. Only one brotherhood of the same institute and kind may be established and aggregated in both secular and regular churches.

2. This must be done with the consent of the Ordinary and with letters of testimonial from the same.

3. The graces and indulgences granted to the brotherhood must be promulgated, with the prior knowledge of the Ordinary.

4. Those establishing or aggregating a brotherhood must expressly and specifically communicate to the establishing or aggregating Order the privileges and indulgences specifically granted to that Order, and not those of which they enjoy through the privilege of communion (understand, with other Orders).

5. The statutes of the brotherhood must be examined and approved by the Ordinary, and may be corrected.

6. In the aggregation and establishment of brotherhoods, alms and other charitable subsidies may be received, according to the form prescribed by the Ordinary.

7. These alms may be distributed at the discretion of the Ordinary for the benefit of the Church, and for other pious purposes.

However, from the Clementine Bull, one might ask: "What if several brotherhoods of the same name and institute are found to have been erected in the same place before the promulgation of the aforementioned Bull?"

Answer: "They may be maintained; but they should petition for new letters of erection according to the form approved by the Pontiff."

[*Latin ed. p. 282*]

282. THE EXISTENCE OF THE CONFRATERNITY, and the lack of prior civil approval. The approval of the Bishop was of such a nature that it could not have been more extensive; for he not only approved the statutes and confirmed the erection, but also expressed his will that the institution should, at some point, be established in a chapel of the mother Church, as has been done; from which institution, the confraternity acquired a certain

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right to exist, for the erection of any confraternity of the same title, invocation, and purpose. And so it happened that, when it was a question of establishing a society in the Church of the Annunciation, those who were to be involved, that is, the most prominent members of the confraternity, were heard. For this reason, the Ordinary recognized the confraternity of charity as a true confraternity of the Seven Sorrows; "otherwise, why would he have questioned the members if they had no interest or right, in order to prevent another confraternity of the Seven Sorrows from being established, when there was no similar one?" Moreover, what harm is there if Clement VIII, in the aforementioned Bull, is seen to have given the Bishops the power to establish only those confraternities which arise from the actions of Orders or confraternities? He did not, in truth, grant any Order the power to establish new confraternities. Barbosa, in *De Officio et potestate Episcopi*, part 3, Alleg. 7, 5, n. 2, and others, treat of the Episcopal power concerning confraternities to such an extent that they consider it necessary, even for the validity of the statutes (1). Therefore, the confraternity of charity is rightly called a confraternity of the Seven Sorrows, as its germ. (!) Barbosa, in the aforementioned passage, states nothing other than that, from the decrees of the Council of Trent, Session 22, *de Regno*, except for the Bishop's right to visit confraternities. Furthermore, concerning those confraternities and hospitals, except those which are expressly stated to be under the immediate protection of the King: the Bull cited by Clement VIII says nothing about the Episcopal approval being necessary for the validity of the statutes; (the Bishop, even if he deposits a hospital or confraternity, which are under the immediate protection of the King, to the Apostolic See, does the legate have the right to visit hospitals, colleges, and confraternities of laymen, even those which are called schools, or whatever else they may be called, without their license?). It is clear that this does not pertain to a secular matter, but to the Bishop.

[*Latin ed. p. 283*]

EXISTENCE OF A CONFRATERNITY – 283. However, it is certain that these rights were restricted by the Congregation established in the Church of the Most Holy Annunciation, both by the conditions imposed by the General Prior of the Servants of Mary, and by the restrictions expressed in the decree issued by the Ordinary. Since the letters of the General Prior were given under two conditions: 1° that the consent of the Ordinary be obtained, and 2° that no other similar Confraternity existed within three miles, (1) it is clear from the very decree itself that the Ordinary has restricted everything concerning Indulgences, the right to enroll the faithful, and the blessing of crowns and scapulars to the Dean of the Chapter, and has denied permission to hold other public processions and functions. Furthermore, no mention is made in the decree of the collection box, the banner, the statutes, or other similar things which are customary in Confraterni-

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ties. Therefore, the Ordinary did not wish to establish the Confraternity. But even if he were to establish it, it could not exist, for the reason that another Confraternity of the same name and invocation already existed in the parish church. The similarity and identity of Confraternities consist in the name, invocation, title, and habit, all of which are present in both Confraternities; therefore, the later one, if it were ever established, could not exist while the former one already exists. Indeed, Clement VIII, in the cited Bull, did not say that the later Confraternity should be annulled where another similar one already exists, but the commentators unanimously affirm that the nullity of the later one is to be considered certain. (2) (1) It was not possible for the Brothers of the Most Holy Annunciation to inquire into the matter and object to the nullity of the existence of the Confraternity of Charity, should another Confraternity be established. (2) Indeed, Pignatelli, *Consultationes de Congregationibus*, Volume IV, Consultation XVIII, states: "If in any church an altar is found with a devoted image, it cannot be... that another altar with the same image or invocation be erected..." And he also stated that "one church or university cannot prohibit another from assuming a new name prejudicial to itself," as the Rota also stated in the case of the Canons of Ampuriensis on April 20, 1646, before Meltio.

[*Latin ed. p. 284*]

28. THE EXISTENCE OF THE CONFRATERNITY. Can the brethren of the confraternity existing in Aversa claim any rightful possession? Did they not, in the year 1794, present complaints to the Ordinary, alleging that the Feast of the Most Sorrowful Virgin was celebrated with great and extraordinary solemnity by the Confratres of Charity? Therefore, the Confratres of Charity were already in possession of their existence; and from the year 1794 to the year 1803, did they not denounce rivals for collecting alms publicly, and also for other rights which they claimed to possess? Furthermore, when the matter was brought before the criminal judge, he ruled that the confraternity of the Seven Sorrows did not exist in the Church of the Annunciation, but only a congregation of the faithful. Did not the Government of Sicily, at the beginning of the year 1827, order all confraternities to present their statutes for approval, or else they would be suppressed? Only two were recognized: the Confraternity of the Most Holy Sacrament, and the Confraternity commonly called "dell'Addolorati," that is, of Charity, which at that time was led by Joseph Cipolla and Canon Donzelli? Therefore, even if the confraternity in Aversa did exist, it was suppressed by the civil authority; and this civil authority's judgment, even if it had no bearing on canonical rights, could not prevent the Confratres of Charity from exercising their rights. It must also be noted that, from the suppression of another confraternity, which, with the same name and purpose, would take its place, the earlier confraternity, already established in the same place, cannot claim any right. This has been decreed by the Holy Congre-

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gation, as is the case, for example, in Forlì on March 31, 1640; in Cassano on July 17, 1640; and in Gubbio on March 23, 1641. In these cases, it was decreed that new confraternities of the same name and institution, erected after the suppression of the former, should be suppressed, and that the acts of the confraternity under whose name it was suppressed should be prohibited. Furthermore, according to Quaestio III of the Decrees concerning Confraternities, it is expressly stated that, although a confraternity is erected in words, after citing many precedents, "the one erected first must be maintained," and the later one annulled. However, this cannot be said of all confraternities. The Confraternities of the Most Holy Sacrament and of Christian Doctrine are excepted, which can be established, and ought to be, in every parish, as declared by the Sacred Congregation of the Council, in Epistola Regulari, in Vercelli, on February 16, 1610. These acts are proper to all the faithful, and are not exclusive to confraternities; and to prevent them in any church would be detrimental to piety and devotion, and to Christian liberty.

[*Latin ed. p. 285*]

From this, it is clear that the matter has the greatest weight when it is understood that the statutes of the Brotherhood of the Annunciation were established at that time, which were to be examined and approved. Whatever the case may be, the Brotherhood of the Annunciation either existed from the year 1752, or it begins to exist today. If the former, it must be annulled according to the cited authorities, because it is identical to a pre-existing one; if the latter, it can never be established, since there is already another Brotherhood of the same name and institution in the same place. After considering all of this, the Fathers, presiding over the Congregation of the Council of Trent, considered that they should respond to the question of whether the sentence of the Archdiocesan Curia of Syracuse should be confirmed or rejected, and they judged that the sentence should be confirmed according to the following manner: 1° In the beginning of the dispositive sentence, it should be stated: "The petition of the members of the Congregation of Charity under the patronage of the Blessed Virgin Mary, commonly called..." 2° As if they were deleted, the words should be considered that refer to the dispositions of civil authority in spiritual matters.

From which it is gathered:

I. That every Brotherhood must be called by its principal name.

II. That the legitimate existence of a Brotherhood requires episcopal approval.

III. That no Brotherhood can be established in places where another of the same name and institution has already been established, except for the Brotherhoods of the Holy Sacrament and Christian Doctrine, which can and should be established in each parish, notwithstanding that any other

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Brotherhood may be found there.

IV. That in canonical and spiritual matters, civil government has no power.

(1. Both Brotherhoods, having confirmed their recognition, were able to remove controversies and disputes that had arisen even after publication. Act. Lom. VIII, title. X, chapter XX. Bullae Clementis VIII, from the Apostolic See, dated 19.)

[*Latin ed. p. 286*]

FROM THE HOLY CONGREGATION FOR RITES. OF THE BEATIFICATION AND CANONIZATION OF THE SERVANT OF GOD, JANUARIUS MARIA SARNELLI, PRIEST OF THE CONGREGATION OF THE MOST HOLY REDEEMER. OPINION REGARDING THE QUESTION: Whether a Commission for the introduction of the Cause should be designated in this case, and for the purpose of what it is intended? Summary of information. The Servant of God, Januarius Maria Sarnelli, was born in the flourishing city of Naples, in Italy, on the eve of the Ides of September, in the year 1702, from most noble parents, namely, Angelo Sarnelli, Lord of the Village of Ciorani, and Catherine Scoppa; he was washed with the sacred baptism two days after his birth, and was given five names, of which the first were Januarius, Mary, and Francis. His parents instilled in the boy a pious and diligent education, so that he might become what he was later found to be and judged to be. The fruits of this pious upbringing immediately appeared in the boy; indeed, as Father Joseph Dandi testifies, from his childhood he was devoted to acquiring devotion and Christian virtues; he was so modest that he did not raise his eyes to his sisters, nor to his mother; he was obedient to his parents, and addicted to mortification, for he deprived himself of things freely offered, and if sometimes some recreation or amusement was prepared at home by his father, he would immediately leave the house so that he would not be forced to participate in the recreations and conversations.

[*Latin ed. p. 287*]

Decree 287. Having reached the age of puberty, he resolved to bid farewell to the world and enter the Society of Jesus; although forbidden by his father, he began to cultivate more diligently those virtues which he hoped to exercise more safely and freely in a monastery. Therefore, for a long time, he was distant from amusements and the company of young people, and, having devoted the necessary time to prayer, he would go to church, and before the Blessed Sacrament in Alia, he would beseech God to show him the way by which he might most safely attain eternal salvation. At the urging of his father, he devoted himself to jurisprudence, and although still young, he achieved considerable praise in handling legal cases and conducting business matters; nevertheless, amidst such

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affairs, he attended Mass daily, and he visited the Blessed Sacrament daily in the church of St. Francis Xavier, which he was accustomed to frequent so much that he was either there or at home, and was certainly present when those who sought him came looking. Meanwhile, as his charity increased, he became accustomed to visiting the sick in hospitals, and to serving them; and there, he was recognized by St. Alphonsus de Liguori, and he understood that he was being called to greater things. From this point, having abandoned his legal pursuits, he put on clerical garments in September 1728. In the year 1729, he entered the *convitto* (seminary) established by Matthew Ripa in Naples, called the *Convictum Clericorum*, in order to teach young men there, whom he would later raise to the priesthood and send to the Chinese Empire for the purpose of spreading the Gospel, and he himself was the one who encouraged St. Alphonsus to join him there. The servant of God devoted himself there with all his heart to the study of divine things, and he was an example to his fellow students through his austerity of life and his fervor of charity; and whenever he went out, he either taught Christian doctrine to children, or he visited hospitals, in order to provide the sick with assistance, consolation, and warnings of salvation. In April 1730, he received the clerical tonsure, and from then on, he increased his piety; and, with the proper intervals of time observed, and after having performed spiritual exercises, in the year 1732, on the Saturday after Pentecost, he received the dignity of the priesthood. The new priest, inflamed with zeal for the house of God and eager to procure the salvation of souls, joined his companions in the Apostolic Missions established in Naples, for sacred excursions.

[*Latin ed. p. 288*]

288 While offices were being performed and vices were rampant, a most bitter war was declared; he knew no rest nor delay; he preached all day, received the confessions of the faithful, except during the time of preaching, and sustained himself with very little food; and then he showed his charity to the poor and the elderly residing in the hospitals, and at the same time he visited the sick and those condemned to the galleys, so that he might provide them with spiritual and temporal assistance. But the chief concern of this excellent priest was directed towards boys and young men, whom he often surrounded, so that he might teach them faith, piety, morals, and duties. Indeed, in order to accomplish this better, he entered into a pious society with some outstanding priests, among whom St. Alphonsus stood out; and from this group arose a work of great benefit for the instruction of the people; for not only were ecclesiastics called to the work, but also pious laymen, with great benefit to the boys and young men. While Sarnelli was working strenuously and unceasingly in the Lord's vineyard, it happened that St. Alphonsus laid the foundations of the Congregation of the Most Holy Redeemer; and he bravely defended it against the great opposition it

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faced at that time; and finally, he himself gave the name to the instituted Congregation in the year 1733. He devoted himself entirely to the Holy Bishop, and pronounced three vows, with a fourth added concerning perseverance, in Quarten. However, he wished to accomplish something greater for the new Institute, striving to have a college founded in the town of Pernes; which he accomplished with the help of his father, and also by his most pious brother, Andrew. Meanwhile, partly due to his poor health, and partly due to his excessive labors, with the permission of his Superiors, he returned to Naples, where, seeing the city afflicted by a grievous and dangerous plague, caused by the vice of prostitution, which was widespread and unpunished, he declared war against this infamous vice with all his might; and, with God's blessing, he partly brought back this flock of prostitutes to a good life, and partly he happily saw them expelled and cast out from the royal city. And, after an examination of the virtues of this Institute, it was found that...

[*Latin ed. p. 289*]

It is testified that in him there was a most excellent faith, both because of the vastness and extent of the knowledge he sought concerning it; and also because of the greater firmness and certainty with which he held those beliefs; and also because of the more profound effect of devoted will with which he embraced them; from which it came to pass that he constantly meditated on the sacred Scriptures, striving to pour forth heavenly doctrine into the Christian people, and that he continually approached the Sacrament of the Holy Eucharist, and that very often he was transported in mind and affection to God. It is also evident that he had an outstanding and most firm hope, because, according to what Benedict XIV says in *De Beatis et Canon. Sanctorum*, book 3, chapter 23, number 16: "The habit of hope inclines towards hoping for the ultimate end, that is, to see God Himself and to enjoy Him; and secondarily, towards hoping for the means and helps necessary to attain that end;" the servant of God directly intended God as the ultimate end, in whom he would find rest, and he hoped to obtain from Him the means and helps necessary in this life; he strove, as it were, against all worldly obstacles, his noble birth, his family comforts and riches; he confided in no human beings, but rather was despised, rejected, and mocked by them, and, relying only on divine assistance, he undertook great and arduous tasks, and endured heavy labors, although infirm in health and lacking in strength. Concerning charity, which is the greatest and most powerful of all virtues, since the entire force and reason of Christian sanctity and perfection are contained in it, it is observed that in him it was most outstanding, both towards God and towards his neighbor; for he possessed in himself singular innocence of life, and diligent observance of divine laws, and he said farewell to the world for the sake of God, and afterwards, having made vows to observe the evangelical counsels, he ded-

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icated himself entirely to divine service; he never sought himself, nor what was his own, but only considered the divine will and divine glory, and he expended all his strength and whatever talents he possessed, in order that the kingdom of sin might be destroyed, and that all might be converted.

[*Latin ed. p. 290*]

290. DECIUS. Il amava Dio. Perciò, con ardore di divina carità, sia leggendo le Scritture, sia recitando le preghiere, versava tante lacrime che spesso doveva interrompere la lettura o la preghiera. Spesso, inoltre, la sua interna carità, con sospiri e preghiere ferventi, si manifestava così apertamente che a volte, senza rendersene conto, camminava per i corridoi del monastero, con le braccia tese verso il cielo, gli occhi fissi nell'alto, emettendo sospiri e gemiti. Ma il vero e inequivocabile segno di una santità sincera è la carità verso il prossimo; e Sarnelli esercitò questa virtù in modo tale che non solo dedicò tutta la sua vita a coltivarla, ma, attraverso i suoi sforzi nel sacro ministero per la salvezza dei fedeli, diede un esempio di anima veramente nobile. Poiché ci sono due generi di opere con cui questa carità si esercita (alcune riguardano l'aiuto allo spirito, altre al corpo), il servo di Dio si distinse per la sua assiduità, la sua generosità e la sua efficacia in entrambe. Con indefesso studio e cura, si dedicò a insegnare la dottrina cattolica anche a coloro che erano ignoranti, prima ancora di iniziare il sacerdozio, e non mancò di mostrare una sollecitudine paterna verso le fanciulle. Si adoperò con impegno affinché il Clero fosse degno di quella dottrina e santità che si addicono alla dignità e all'ampiezza di questo ordine, e perciò desiderava che fossero istituiti istituti di teologia morale, le cui regole egli stesso avrebbe stabilito; si dedicò con zelo alla cura delle vergini, delle istituzioni femminili e degli orfanotrofi, e si adoperò per guidare le pii congregazioni di cittadini illustri, e per istruire i gruppi di bambini e bambine nella pietà. Ogni genere di persone sperimentò la sua industria e la sua carità generosa, ma soprattutto coloro che erano immersi nel peccato; verso di loro, si adoperò con ogni mezzo per riportarli a Dio. Cercava in ogni modo di poter salvare le anime, e raccolse un frutto abbondante esortando, persuadendo e predicando, e diffuse la parola di Dio in innumerevoli luoghi. E quanti aveva suscitato e commosso con i suoi sermoni, li invitava a riconciliarsi con Dio nel confessionale, dove sostenne sforzi immensi e incredibili nell'esercizio di questo santissimo ufficio; e in esso era così efficace che riusciva a riportare alla virtù anche i più scellerati.

[*Latin ed. p. 291*]

DECREE 291: Those Servants of God who, with zealous devotion, dedicate themselves to such works as the redemption of prostitutes, who both ruin themselves and lead many others to sin; abandoned and far from cities, they are those for whom the help of a merciful Priest is most necessary; to

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convert prostitutes, he employed alms, sacred sermons, and exhortations, and he was not ashamed to implore the charity of others to support them. For those who, living far from towns, are deprived of all spiritual help, he undertook sacred missions, sparing no effort to assist them, frequently repeating: "The Lord hath sent me to preach to the poor." And for this reason, he embraced the Congregation of the Most Holy Redeemer, for the evangelization of the poor, the abandoned, and those living far from cities. In these apostolic labors for the salvation of souls, and in other works of charity, which we pass over for the sake of brevity, the Servant of God persevered, day and night, until his death. From what has been said about the excellence of the Servant of God in the practice of the theological virtues, everyone can easily understand how much he also excelled in cultivating the cardinal virtues and other related virtues. Therefore, it is not surprising that he had a laudator and a biographer. Foreseeing his death, the Servant of God passed away in Naples on June 30, 1744; at the age of 42, and so great was the devotion of the people, and so sweet the fragrance emanating from his body, that when it was exposed for two days in the church, they competed to cut off pieces of the vestments and priestly ornaments with which the body was clothed, and to take them away piece by piece; therefore, it was necessary to use force to restrain this outburst of piety. A special place in the chapel of St. Andrew in the church commonly called *S. Maria dell'aiuto ai Coltrala* was assigned to his tomb, and in the year 1858, by archiepiscopal authority, his body was duly recognized and placed in the same place.

What has been objected by the Promoter of the Faith against the introduction of this cause:

1. This cause has not been initiated for 120 years, because neither his contemporaries nor those who followed them promoted it.

[*Latin ed. p. 292*]

202 They have not judged that he deserves the honor; for they lack not only witnesses of visions, but also subsidiary proofs. Of the twenty-four witnesses who were summoned for examination, the oldest has lived for barely half a century since the death of the Servant of God; the others are younger. 2. Furthermore, these witnesses are subject to the exception known as affection, since they are either relatives, or friends, or blood relatives of the Servant of God, and those who came forward to give testimony did so to enhance either the reputation of the Congregation or of the family. 3. There is a lack of oral tradition concerning the sanctity of the Servant of God, since most of the witnesses affirm that they began to consider him to be a saint after reading the devotional books which he had published, and not because they received this opinion from witnesses of visions. 4. Finally, the fame of the virtues and miracles of the Venerable Servant of God was not widespread among the common people, or in a large part of the world,

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but remained within one Congregation of the Most Holy Redeemer. 5. Nor are there lacking obstacles that clearly undermine the heroic virtues of the Servant of God. (a) Indeed, the acts of piety which are said to have been performed by him in his youth are entirely undermined if it is considered that he received the Sacrament of Confirmation in the fourth year of his life, that is, at the beginning of his twentieth year; and therefore, it must be inferred that he also approached the sacred Synaxis after that age. (b) He was also inconsistent in embracing a particular way of life; for at first he desired to enter the Society of Jesus, but being forbidden by his father, he accepted the profession of a lawyer; after fourteen years, he relinquished this, put on clerical garb; and in the year 1729 he entered the Congregation of the Missions of China, but after barely eight months, he returned to his paternal home to dedicate himself to the Congregation of Secular Priests, founded under the invocation of the Queen of the Apostles in Naples. After being ordained a priest, he joined the new Congregation of the Most Holy Redeemer founded by St. Alphonsus, and there he took three religious vows, to which he added a fourth, to persevere in the Congregation.

[*Latin ed. p. 293*]

(c) He did not prove to be a sufficiently strict guardian of the vow of poverty; indeed, he even attempted, or was about to attempt, to bring a lawsuit against the Fathers, in order to obtain a portion of the property that belonged to him; which, moreover, constitutes a grave and dishonorable injury to his parents; and, nearing death, he made a will in which it is clear that he had disposed of all his goods for pious causes. However, it is entirely obscure how this could have been lawful for one who was bound by the vow of poverty. These are the matters that have been brought to light by the aforementioned observations. But the Advocate refuted all of these with the most convincing arguments: Firstly, he responded that none of the objections raised had any weight, since it had been proven by irrefutable testimonies that the Venerable Sarnelli had been considered a saint by his contemporaries, as testified by numerous witnesses, without any exception. Saint Alphonsus of Liguori considered his deceased confrere to be a powerful patron in heaven. The Cardinal Gersale, Archbishop of Naples, upon hearing of the death of the Servant of God, exclaimed that Naples had lost its Liguori, and the Neapolitan clergy, its pearl. Furthermore, Saint Alphonsus himself wrote a biography of that man, mentioning several prodigious graces obtained through the intercession of the Servant of God. Other witnesses affirmed that they had received heroic virtues and sanctity from the Servant of God, so much so that some even placed him above Saint Alphonsus himself. Therefore, it was not that the contemporaries or successors of the Servant of God did not consider it right to promote his cause, but rather that the Liguorian Congregation was obligated to promote and bring to fruition the cause of its Founder, and to place his statue in the

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Vatican Basilica; which consumed a considerable amount of the Congregation's resources. Despite these obstacles, documents were being gathered to introduce the cause of the Venerable Sarnelli. Furthermore, the cause of the Venerable Ogerardi was also to be promoted, for whom incredible devotion was shown by the faithful, especially in the provinces of Italy, particularly the southern region, due to the miracles that were attributed to his intercession. Thus, a double burden was placed upon the best, yet not wealthy, Congregation.

[*Latin ed. p. 294*]

294. A decree, and therefore it was necessary for both causes to proceed with equal speed. However, if, for these reasons, the cause of the Venerable Sarnelli could not be proposed, and yet documents were being collected, so that it might be proposed in due time; it is clearly evident that this was not because it was judged unworthy to be promoted, but because it had not been promoted for other reasons. Furthermore, besides the witnesses who have seen [the Servant of God] and those who are acquainted with him, in this case there are subsidiary proofs, which Benedict XIV teaches are to be admitted, as is clearly evident from the records, in book 3, chapter 8, section 4.

2. Not all the witnesses were chosen either from the family of Sarnelli, or from the students of the Ligurian Institute, or from their friends; nor, even if they were, can their testimony be rejected, because it is through them, above all, that the virtues of the Servant of God can and must be proven, and because outsiders are considered less suitable for confirming matters pertaining to domestic affairs. Do not these witnesses, after all, mingle with other people and appear in public, just like any other citizens, and can they not give their testimony about what they have seen or heard? Has the testimony of associates or relatives ever been rejected in other similar cases? And are not these witnesses in our case in agreement with those who are neither relatives nor friends of the Venerable Sarnelli? On what grounds, then, can they be rejected?

Furthermore, Benedict XIV, in book 3, chapter 6, number 11, says: "It is permissible for the judges, whether ordinary or delegated, to question the witnesses in these causes, to see if they are favorably disposed towards the Servant of God or the Blessed, and if they desire his beatification or canonization; and it is permissible, if they answer in the affirmative, that the promoters of the cause should not give credence to their words; however, this objection has always been rejected by the Holy Congregation; for it cannot be presumed that witnesses, solely on account of their pious feelings, will not relate the facts as they are, and indeed, everyone knows that it is the desire of the witnesses who are examined in these causes that the Servants of God and the Blessed be beatified and canonized, provided that their virtues and miracles are approved by the Holy See."

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3. It is entirely false what the Promoter of the Faith objects concerning the oral tradition regarding the sanctity of the Venerable Servant of God; for the witnesses affirm with one voice that, from his death until now, he has shone and continues to shine for his sanctity.

[*Latin ed. p. 295*]

Neapoli, and then elsewhere; this reputation was common among any gathering of people, first in Neapoli, and then in other places; and with the passing of years, it did not diminish, but rather increased. This reputation, however, was not learned from reading the books that the Servant of God had written, but from other sources; namely, from what they had observed in his life, and from what they had heard from eyewitnesses, and from the fact that in Neapoli, in particular, there was a constant reputation of this kind, both among men of the Church and among those devoted to the world. Furthermore, miracles, or miraculous graces, were obtained not only by Neapolitans, but also by inhabitants of other cities and nations, through the intercession of the Servant of God; therefore, those things which are objected by the promoter of the cause in Quarten are also false.

5. The objections raised do no harm to the Servant of God. And (a) What harm did it do to St. Alphonsus of Liguori that he received the Sacrament of Confirmation not at the age of 24, as Sarnellus claims, but at the age of 26? For this was the case in Neapoli. At that time, it was the custom, not only among common people, but also among nobles, citizens, and men of the law, even if they were pious and endowed with good morals, to receive the Sacrament of Confirmation not before adulthood, but only after reaching the age of reason... so that no scandal might arise; indeed, every witness confirms this exception. Therefore, the objection that he came to the sacred function after that age is refuted by itself. (b) Furthermore, it cannot be deduced from the aforementioned observations that the Servant of God was changeable and inconsistent, since he always maintained his will to dedicate himself to the service of God; for, although prevented by his father from joining the Society of Jesus, if he devoted himself to the study of law, during the hours when he was free from legal affairs, he spent a long time before the Blessed Sacrament, praying to the Lord to show him the way; and in order to gain divine favor, he practiced charity, frequently visiting hospitals to minister to the sick; and there, God revealed his will without ambiguity, as the Servant of God himself testifies; therefore, since, when studying law, he was judged to be fragile and infirm before the age of 25, and many objections were raised on that account, it cannot be objected to him at a later age, when he had entered that age.

[*Latin ed. p. 296*]

296 He put on the clerical habit; in which there was certainly no fickleness, but rather the greatest firmness of mind. Moreover, who does not

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know that God, in His supreme wisdom, employs various, manifold, and wondrous ways to lead His servants to that state in which the light of sanctity may shine forth? If we were to judge, according to human standards, what B. Benedict Joseph Labre did in various circumstances, would we not consider him to be inconsistent? And the same must be said of many other saints who, either from solitude returned to a life full of business, or from secular pursuits, or from the palestra, came to the Church. Indeed, did not St. Alphonsus, at almost the same time, prepare himself for the Clergy in a similar manner? And what of the other things that have been brought up? When the servant of God established himself in the houses of the Congregation in China, he did not intend, in the least, to adopt a particular state, nor to establish a certain way of life; for, according to the testimonies of witnesses, he went there in order to better prepare himself for embracing the clerical state in solitude. And if the servant of God returned to his paternal home in the year 1730, in order to dedicate himself to the Congregation of secular priests for Apostolic missions, he did well. For he was already a cleric, and it was no longer necessary for him to prepare himself for the clergy; rather, it was necessary for him to undertake an activity, and nothing was more suitable than to join the Congregation for Apostolic Missions. This, however, was not like a religious family, which coalesces in one house with proclaimed vows, but was a gathering of Apostolic men who assembled in the cathedral church of Naples, for which reason nothing prevented one who had been a member of the college in China from being enrolled in this group. And St. Alphonsus did the same, and this is not a sign of inconsistency. But then, having entered the Ligurian Congregation, what happened? The servant of God wished to dedicate himself more strictly to the service of God, even by pronouncing vows. And this is a sign of firmness, or rather, of the firmness of mind, in consecrating himself entirely to God? And if he then returned to Naples, it was not because he had abandoned the Ligurian congregation, nor because he had been expelled, but because it was necessary for him to be in Naples, both because of his infirm health.

[*Latin ed. p. 297*]

DECRETUM 297: ut ad ea opera atenderet quae perficienda susceperat, et quae praesentiam eius exigebant, sicut testatur Sanctus Alphonsus: reversus est autem Neapolim de consilio suae conscientiae moderatoris, qui tunc erat ipse Sanctus Alphonsus. Quomodo vero dici potest Sarnellum non fuisse ad mortem usque evangelicae paupertatis rigidum custodem, quando constat et omnia sua pauperibus distribuisse, et ob hanc praeclaram virtutem ab ipso Sancto Alphonso commendatum? Sed nonne Patri litem intentabat, vel intentare minatus erat? Minime, id enim ex documentis extantibus non constat. Testamentum demum condidit, et condere potuit, eo quod ipsae Ligorianae familiae Constitutiones id

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ei ultro facere concidebant; condidit autem ad terminos eorum quae Constitutiones praedictae praecipiebant: nulla igitur paupertatis infracido. Quibus visis atque maturae consideratis a Sacra Congregatione Rituum, sequens Decretum editum fuit. DECRETUM: "De beatificatione et canonizatione Servi Dei Januarii Mariae Sarnelli Sacerdotis e Congregatione SS. Redemptoris. Nonis Iulii anni 1870, cum Sanctissimus Dominus Noster PIUS Papa IX., benigne induisset, ut de Duilio Signaturae Commissionis Introductionis Causae Servi Dei IANUARTII MARIAE SARNELLI praefati ageretur in Congregatione SS. Rituum Ordinaria absque interventu et voto Consultorum, licet non elapso decennio a die praesentationis Processus Ordinarii in actis SS. Rituum Congregationis, et scriptis eiusdem Servi Dei non perquisitis et examinatis, Eius et Rmus D. Card. Aloisius Bili, huius Causae Praepositus, ad instantiam Rmi P. Brixii Queloz, Procuratoris Generalis Congregationis SS. Redemptoris, et Postulatoris huius Causae, attentis litteris postulatoriis plurium Virorum Ecclesiastica praesertim dignitate illustrium, in Ordinariis SS. Rituum Comitiis ad Vaticanum hodierna die coadunatis, sequens Dubium dis utien-

[*Latin ed. p. 298*]

Concerning the matter which was proposed, namely: Whether the Commission for the introduction of this Cause should be signed, in regard to the case and the effect of which it treats? And the Sacred Congregation itself, having carefully considered all matters, and having heard the voice and the written opinion of the Reverend Father Lawrence Salvati, Promoter of the Faith, decided to reply: Affirmative, that is to say, the Commission should be signed, if it pleases the Most Holy [Pope]. On the 28th of November, 1874. Afterwards, these matters were faithfully reported to the Most Holy Pope Pius IX by the undersigned Secretary. His Holiness approved and confirmed the judgment of the Sacred Congregation, and with his own hand signed the Commission for the introduction of the Cause of the Venerable Servant of God, January Maria Sarnelli, aforementioned. On the 3rd of December, in the same year. (Signed) The Bishop of Ostia and Velletri, Cardinal Patrizi, Prefect of the Sacred Congregation. (Seal) D. Bartolini, Secretary of the Sacred Congregation.

[*Latin ed. p. 299*]

290 DECREE of Prague, concerning the confirmation of the worship rendered from time immemorial to the Handmaid of God Agnes, daughter of Přemysl, beloved King of Bohemia, of the Order of the Most Holy Clarisses, now blessed. At the present day, in the Sacred Congregation of Rites, held at the Vatican, I, the undersigned Cardinal, Prefect of the aforementioned Sacred Congregation and promoter of the cause, have submitted the following question: "Whether the sentence pronounced by the Most Reverend Ordinary of the Archdiocese of Prague, concerning the worship rendered

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from time immemorial to the aforementioned Handmaid of God Agnes, or concerning the exemptions granted by the Decrees of the Most Holy Pope Urban VIII, should be confirmed in the case and for the purpose in question?" After mature deliberation by all the Most Reverend Fathers entrusted with the safeguarding of sacred rites, and after hearing the voice and written opinion of the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, it was judged necessary to respond "Affirmatively." November 28, 1874. These matters, faithfully reported to His Holiness, Our Most Holy Pope Pius IX, by the undersigned Secretary, were approved and confirmed by His Holiness on December 3rd of the same year.

C. BISHOP OF OSTIA AND VELITERNI, CARDINAL PATRIZI, SECRETARY OF THE SACRED CONGREGATION.

*S. jP. Bartolini, SECRETARY OF THE SACRED CONGREGATION.

[*Latin ed. p. 300*]

300 DECREE Concerning the Validity of the Proceedings in the Cause of Beatification and Canonization of the Venerable Servant of God, Father Francis of Ghisone, Cleric, Professed of the Order of Friars Minor of the Observance of Saint Francis. In the Cause of Beatification and Canonization of the Venerable Servant of God, Francis of Ghisone, aforementioned, it was necessary to deliberate in the Ordinary Congregation of Sacred Rites concerning the validity of all the proceedings constructed in said Cause. At the request of the Reverend Father Bernardine "of the Crypt of the Castle," Priest, Professed, and General Postulator of the Causes of Beatification and Canonization of the Servants of God of the Order of Friars Minor of the Observance of Saint Francis, the Eminent and Reverend Cardinal Aloysius Billio, Promoter of the Cause, in the Ordinary Congregations of Sacred Rites held this day at the Vatican, proposed the following question: "Whether it is established that the proceedings, both those constructed by Apostolic and by Ordinary authority, are valid, if the witnesses have been duly and correctly examined; and if the testimonies produced have been legitimately obtained, in the case and for the purpose in question?" Furthermore, the Eminent and Reverend Fathers entrusted with the safeguarding of the sacred rites, after a careful examination of all matters, having heard the Reverend Father, Doctor Lawrence Salvati, Promoter of the Holy Faith, both orally and in writing, judged it fitting to respond: "Affirmatively, in all respects." November 28, 1874. The aforementioned matters having been faithfully reported to the Most Holy Lord, our Pope Pius IX, by the undersigned Secretary of the Congregation of Sacred Rites, His Holiness deigned to ratify and confirm the judgment of the Sacred Congregation. December 3, in the same year.

C. The Bishop of Ostia and Velletri, Cardinal Patrizi, S.R.C., Prefect.

[S.D.]

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1) [Signature]
S.R.C. Secretary.

[*Latin ed. p. 301*]

By the most holy providence of Our Most Holy Father, the Pope, a discourse was delivered on the fifteenth of March, in the year one thousand eight hundred and seventy-five, to the Cardinals of the Holy Roman Church, in the buildings of the Vatican.

Venerable Brothers: We acknowledge that it is Our duty to attend to the concerns of all, especially in these most grievous times. We have considered it necessary to turn Our attention to the esteemed Order of your brethren, who are to assist Us in the care of the entire Church, and to fulfill this duty.

We would indeed wish to carry this out according to the ancient and solemn rite, which the dignity of the Church demands; but the harshness of the times does not permit it, for they are so severe that they demonstrate that We are not even free to lament the evils of the Church. We are not surprised that those who are separated from the Church by an old error and hatred presume to attempt this; but that in this miserable Italy, in which the supreme Chair of Truth has been established by divine dispensation, those who were formerly sons have become enemies of the Church, and through their own will, or through external influence, strive and plot to destroy the Church itself, which cannot be separated from the salvation of human society; this we lament with deep sorrow and from the bottom of Our heart.

From this effort have sprung forth so many deplorable acts, which have unjustly harmed the rights, liberties, possessions, and ministers of the Church, and which, having been observed for a long time, have compelled even those who were unwilling to be driven to violence. *Acta Tom. VIII, passim.*

[*Latin ed. p. 302*]

502 ADDRESS: Moreover, that grievous evil continues to flow forth and is promoted day by day, which brings no small harm to souls and to human society, namely, the corruption of youth, by which corruption, it is sought to propagate evils not only in the present, but also to future generations. For all institutions which concern the education of young people, having been taken from the oversight of the Church in this center of the Catholic world, young people are expressly compelled, from their earliest age, to attend schools subject to civil authority, where their minds and hearts are instructed, without any regard for faith and religion, according to the principles and wisdom of this age, the bitter fruits of which the whole world now experiences. Furthermore, the very institution of those who are called to the service of the Lord is involved in so many regulations concerning the method of study, that it becomes increasingly difficult for

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them to pursue this academic course; and therefore, very few now exist, especially after the infamous law concerning military service, who can be admitted to the priesthood. But that the designs of our enemies may be made more evident, certain documents have recently appeared, in which encouragement is given to priests and lower clergy who stubbornly resist bishops and other prelates; and to them is offered hope and protection against those sentences and decrees which may be directed against them. Moreover, the very preaching of the divine word and the dissemination of our sermons are hindered by the hostile acts of political power: laws are enacted, which denounce as criminals those who, whether by means of printing or otherwise, have published the words spoken by us, and the acts of this Apostolic See, whenever it seems to those who threaten such things that something in these acts is contrary to civil institutions and laws. Indeed, by means of such threats, it is made clear what kind of mind and power there is in certain laws, which, under the guise of obedience, seem to protect the freedom and dignity of our faithful, and which more and more reveal how necessary it is for us to possess the supreme and full power, subject to no jurisdiction or arbitrary will, which divine Providence has granted to the Roman Pontiffs, in order to...

[*Latin ed. p. 303*]

Concerning the free and unhindered exercise of the spiritual ministry throughout the entire world. Meanwhile, that threat is directed so that the voice of the supreme teachers of truth itself may be suppressed and may not widely resound, a voice which, by divine right, is emitted for the common good of society throughout the entire world, and which cannot be circumscribed or restrained without also violating the rights of all the faithful. Let those who subject the Church to such servitude consider that they are provoking the severity of divine judgment upon themselves, and that they will experience harsher masters in turn, and heavier yokes of tyranny than was the authority of the Mother, which they rejected after having cast off the bonds. And it is not enough for the enemies of the Church that they prepare the bitter things which we have mentioned, but they also seek to create new causes of discord and disturbances within the very conscience of the faithful. Recently, in a foreign land, certain writings were published, in which the decrees of the Vatican Council were distorted, with the intention that the freedom of your Senate in electing our successors might be violated, and that in that matter, which is a very important part of the entire ecclesiastical order, civil authority might be given. But God, the merciful one, who presides over and cares for His Church, providentially arranged that the most distinguished and respected bishops of the German Empire, through a brilliant declaration which will be memorable in the annals of the Church, most wisely refuted the erroneous doctrines and sophisms put forth on this occasion, and, by erecting a noble trophy to truth, rejoiced

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us and the entire Church. While we bestow the highest praise upon these bishops, both collectively and individually, before you and before the entire Catholic world, we ratify their excellent declarations and protests, which are worthy of their virtue, rank, and religion, and we confirm them with the fullness of Apostolic authority. May Divine Clemency frustrate the designs of the enemies, and may He, remembering His inheritance from evil days, show us that it is not prudence, it is not wisdom, it is not counsel against the Lord. That these things may happily come to pass according to our wishes, let us offer sacrifices of justice in humility and fervent prayer. Our God is just and pious, and...

[*Latin ed. p. 304*]

304. Just as He is merciful to those who are converted, so also He perseveres with those who persevere. Therefore, let us approach Him with all our hearts, contrite, and let us implore comfort from Him, who, because He is good and merciful, if He sees that we love His commandments after being reformed from our evils, is powerful to defend us from the enemy and to prepare eternal joys for us in the future (1). In these great tribulations, since the more fierce the battle, the greater the cooperation of leaders and soldiers, and the greater the virtue required in the field, We, Venerable Brothers, today, for the glory of God and the benefit of the Church, have decided to co-opt six most distinguished men into Our Holy and Roman Senate, namely, the Venerable Brothers Peter Giannelli, Archbishop of Sardinia, Secretary of the Congregation of the Council; Miecislaus Ledochowski, Archbishop of Gnesen and Posen; John MacCloskey, Archbishop of New York; Henry Edward Manning, Archbishop of Westminster; Victor August Dechamps, Archbishop of Mechlin; and the esteemed son, Dominic Bartolini, Apostolic Protonotary, Secretary of the Congregation of Sacred Rites, who, indeed, whether through the episcopal office, with great merit, zeal, fortitude, prudence, and doctrine, or through the singular example of virtue and unwavering spirit, having endured grievous persecutions in the cause of the Church, or through diligent and long-standing, proven service to the Apostolic See in this city, have demonstrated themselves worthy of this honor! In this matter, it is most pleasing to Us that we can offer a certain and sincere testimony of love and devotion to the most noble Churches from which these sacred prelates have been chosen and appointed. Furthermore, in addition to these six Cardinals mentioned, We intend, for the glory of Almighty God, to create five other Cardinals, whom, however, for just reasons, We reserve in Our heart, to be made known at Our discretion; and if this Holy See, by God's will, should be vacant before they are announced, they will be declared by letters attached to Our Testament (1).

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(1) St. Gregory M.

[*Latin ed. p. 305*]

With the fullness of Our Apostolic authority, We declare and decree that those same individuals possess the right, both active and passive, in the election of Our Successor. What do you think? By the authority of Almighty God, of the Holy Apostles Peter and Paul, and by Our own authority, We create the following as Cardinals of the Holy Roman Church: Peter Giannelli, Miecislaus Ledochowski, Ioannes Mac-Closkey, Henricus Manning, Victor Dechamps; and We appoint Dominicus Bartolini as Deacon, all with the necessary and appropriate dispensations, derogations, and clauses. Furthermore, We reserve five others in Our heart, as previously expressed, to be made known later, and We decree and confirm that they shall also enjoy the aforementioned right. In the name of the Father, and the Son, and the Holy Spirit. Amen.

[*Latin ed. p. 306*]

FROM THE HOLY CONGREGATION OF THE SACRED ROMAN AND UNIVERSAL INQUISITION: DECREE. On Thursday, the 12th of March, 1875. The Holy Congregation of the Most Eminent and Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Lord, our Pope Pius IX, and the Holy Apostolic See, concerning the Index of books of pernicious doctrine, and their condemnation, proscription, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on the 12th of March, 1875, condemned and condemns, proscribes and proscribes, or orders that the following works be referred to the Index of Prohibited Books:

* * *

(Here follows a series of symbols and characters, which are not translatable.)

In Latin: *Interpretatio Doctorum Chorepiscopi Iosephi David et Rmi Iosephi Debs auctoris Libri cui titulus: Spiritus confutationis: per sacerdotem Aloysium Sabungi Syrum — Beryti, 1874.*

L'Universo, Lezioni popolari di filosofìa enciclopedica e particolarmente di astronomia e di antropologia etc. date nelle principali città d'Italia da Quirico Filopanti — Bologna nov. 1871 — luglio 1874 — Fascicoli 10 in tre volumi in 8 piccolo.

Histoire politique des Papes par P. Lanfrey. Nouvelle édition revue et corrigée — Paris 1873.

[*Latin ed. p. 307*]

DECREE 507 Concerning the Most Pure and Virgin Blood of the most Holy Mother of God Mary. Most Holy – Dogmatico-ascetic Treatise – Naples 1863. – Decree of the Sacred Office, February 4, 1875 – The

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Author commendably submitted himself and disapproved of the work. Concerning the most Sacred Blood of Mary – Studies to obtain the feast day of the same – Perugia 1874 – Ibid., Decree – The Author commendably submitted himself and disapproved of the work. Therefore, no one, of whatever rank and condition, may dare, in any place and in any language, to publish or to publish, or to read or retain the aforementioned work, but must deliver it to the Ordinary of the place, or to the offices of the heretical Inquisition, under the penalties indicated in the Index of Prohibited Books. Which, through the aforementioned report, presented to the MOST HOLY LORD OUR POPE PIUS IX by me, the undersigned, S.I.C., His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome, on March 13, 1875. ANT. CARD. DE LUCA, Prefect. FR. HIERONYMUS PIUS SACCHERI, Order of Preachers, Sacred Congregation of the Secret. (Seal). On March 20, 1875, I, the undersigned, Master Cursor, testify that the aforementioned Decree was affixed and published in the City. PHILIPPUS OSSANÌ, M.A.G. CURSOR.

[*Latin ed. p. 308*]

503 FROM THE HOLY CONGREGATION OF MARRIAGES, dated February 28, 1874. Confirmation of facts. John S. D., of the Diocese of B, had for a long time shown affection for Mary Vincentia C., of the same place. During this time, Mary Vincentia gave birth to twin boys. John then turned to another woman, with whom he desired to enter into marriage, and announcements of this intention had already been made in the parish church. When this came to the knowledge of Mary Vincentia, on August 11, 1869, she placed an impediment, through the customary inhibition, to prevent John from contracting marriage with another, because she had conceived under a promise of marriage from him, and had given birth to two sons at one time. With this impediment placed, the court immediately began to institute legal proceedings, subjecting witnesses to examination. After this examination was completed, on October 23 of the same year, 1869, the court, having considered the published proceedings, the opinion of the fiscal advocate, and the established time for questioning, determined to render a decision in the case on the second day of the same month, on which day it pronounced the following definitive judgment: "We declare and pronounce that the objections presented by Mary Vincentia against John's freedom to marry do not hold true; therefore, John is free to contract marriage with another; and whoever bears the costs of the litigation shall do so because of the woman's weakness." Immediately after this judgment, Mary Vincentia appealed to the Sacred Congregation of the Council, which, after examining the proceedings and the parties involved, set a deadline

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for presenting arguments.

[*Latin ed. p. 309*]

Furthermore, he proposed to discuss the matter before the assembly of Cardinals, should they wish to examine his rights more closely. And regarding this matter, the following observations have been made concerning the woman. Marriages, which by their very nature solely desire the mutual promise of a future marriage, are undoubtedly included among those which are perfected by simple consent (1). Therefore, provided that the consent of the parties is manifested externally and clearly, no other solemnity, nor any particular wording, is prescribed. Consequently, in order to prove the existence of a marriage, it must be shown that there is a mutual consent of the parties, manifested in some way. Indeed, there are considerable arguments and conjectures available, from which it appears that such a mutual consent existed. Witnesses testify to the matter with unwavering fidelity; one affirms that John consistently maintained the intention of marrying Mary; another says that John persisted in this opinion to such an extent that, even if her father were to prevent it, he would explode in anger at her father; one says that Mary was captivated by John's love, and that she had never heard of any other loves; another says that John wished to marry Mary, even if her father were to arrange other marriages for her, and even if he were to promise her a large dowry. From the testimonies given, it is spontaneously evident that John was bound by a promise not to abandon Mary; otherwise, how could he have so stubbornly resisted his father's will (2)? The witnesses indeed do not testify to a mutual promise; but (1) It is sufficient, according to the laws, that simple consent alone is present, as is clearly asserted in 1 Corinthians 7:38, which says: "He who marries a virgin does well; but he who does not marry her, he also sins; as if the whole matter were placed in the father's judgment." From Cap. 27, Quest. 2, Rota in Maiorica. Sponsalium 20, Ianua, 1712. The law is found in L. 1, ff. de Sponsalibus: "Simple consent is sufficient to constitute a marriage." And: "Marriages, like nuptials, are made by the consent of the contracting parties." The natural, divine, ecclesiastical, and civil laws detest such marriages; and great inconveniences often arise from them, as experience shows. (2) All Doctors hold that children, without the consent of their parents, or when the parents are opposed, gravely sin if they enter into marriages that are contrary to the will of their parents. The Council of Arles, in the year 541, can. 22, declares that it is impious to marry against the will of the parents. Tertullian, in book 2, to his wife, chapter 2, says: "For neither in the earth do sons marry without the consent of their parents."

[*Latin ed. p. 310*]

510. CONCERNING MARRIAGE: To validly contract marriage, a private promise and acceptance are sufficient, and the presence of witnesses

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is by no means necessary. Furthermore, it often happens that, driven by amorous affections, people promise marriage a hundred or even a thousand times, speaking of a future marriage. In this way, a man often wins a woman's love from the beginning, and a woman, with such hopes, binds her love to the man. How, then, can it be denied that there was a mutual promise of marriage between John and Mary? And what is more, what was given to John that seemed to have been bestowed upon Mary, namely, the bearing of two sons in the light? For the woman affirms this with clear words, and her testimony is certainly reliable. As St. Basil says in *Ad Amphiloehium*: "Marriages without witnesses are fornications." The Council of Cologne, in the year 1530, decreed: "It is to be understood that clandestine marriages, which are contracted without the consent of parents and relatives, for the sake of Venus rather than of God, are to be abolished. For many evils arise from these, which are evident. Among these, if they are not annulled, they are at least forbidden, and canonical penalties, that is, excommunication, are imposed on those who contract them, and on those who assisted them with help and counsel." Indeed, for twelve preceding centuries, civil law considered the dissent of parents to be an impediment that dissolved the marriage of children of a family. This was not disapproved by the Church, as is testified by many, among whom is Benedict XIV in *De Synodo Dioec.*, book 9, chapter 11, who says: "Both civil laws, namely those that infringed upon marriages entered into solely by the consent of the parties, whether they were slaves or children of a family, were once considered valid by the Church." Indeed, in *Inst.*, title on Marriages, § 1, it is written: "If they are children of a family, they must have the consent of their parents, of whom they are under the power." If anyone should object to what we have said, neither the man nor the woman, nor the marriage, nor the dowry is understood. Truly, these laws have been abrogated by the Church, and the Council of Trent, Session 24, chapter 1, on the reform of marriage, imposed the sentence of excommunication on those who would declare such marriages invalid in the future: "The Holy Synod anathematizes those who deny that these are true and valid, and those who falsely affirm that marriages contracted by children of a family without the consent of their parents are invalid." Nevertheless, the holy Church of God has always detested and prohibited them for most just reasons. However, for certain reasons that are sufficiently rare, children are excused if they contract marriage without the consent or knowledge of their parents, if, namely: 1. The parents forbid the marriage in general to their children. 2. Or, if they only wish to give a woman who is not worthy, or a heretic, or a sickly, ugly, imprudent, or of a harsher condition, or a harsh woman, to the son, with whom the son believes he will have difficulty in living in peace. 3. If the son is more oppressed by his parents, or if they forbid the marriage because they want the son to marry this or that woman, against his will, considering the serious reasons that move the son to refuse such

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a marriage. 4. Finally, if the parents are far away, and the son cannot warn them without great inconvenience, and he believes that they would gladly consent.

[*Latin ed. p. 311*]

The matter of the *sposalium* (marriage) must be considered, for it is incredible that anyone would claim that she wished to attribute to John an action that he had not committed; such a calumny would not only have prevented the marriage, but would have entirely turned the betrothed man away from her. How could he possibly have taken her as his wife, she who heaped such calumnies upon him, and who, revealing herself to be pregnant, freely confessed that she had conceived from another man? Did she not, therefore, prolong her affections with John? Thus, the dishonor must be attributed to Mary. But who would ever believe such a thing? Surely, a young woman of otherwise good reputation would not have yielded to lust unless she had received a promise of future marriage from him. This, indeed, often happens, but almost always in marriages that are opposed by both parents, or by one of them; for then the betrothed man, in order to be able to enter into the marriage, readily resorts to such a detestable expedient. Therefore, since it is clear that John was determined to carry out his plan, even against the open will of his father, to enter into marriage with her in Vincentia, and if she did not object to this for the sake of her honor, how can one deny or doubt the reciprocal promise of marriage? Indeed, no certain evidence is given concerning the woman's promise, neither in the testimonies of witnesses, nor in the facts themselves; but it is reasonable to doubt it. Did not Mary know that John had been severely reprimanded by his father, and that he had been subjected to fiery torments? Did she not consent to her own dishonor? Did she not enter into long-lasting affections with him alone? How can this be conceived without a promise of a future marriage? And let no one say that all of this rests on conjectures, and not on manifest proof; for a simple conjecture is not that which is based on an act of love, especially when there is no disparity in condition; for free persons enter into relationships with the intention of eventually leading to marriage, and therefore the young woman consents to her defloration in order that the betrothed man may be necessarily compelled to marry her, even against the authority of her superiors (1).

(1) Indeed, I know from experience that men sometimes abandon young women who have been defiled in them.

[*Latin ed. p. 312*]

312 OF MARRIAGES: But let it be understood that these bonds of marriage are founded on conjectures; nevertheless, no one will deny that they are of the greatest importance; and the Doctors generally teach that conjectures of the greatest importance, such as the defloration of an honest

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virgin, and prolonged affections, and public reputation, are sufficient to prove the existence of marriage; among others, Conscius, in his work *De Sponsalibus Filiorum Familiae*, Decision XXVIII, paragraphs 13 and 14. If this (young woman) has given her consent, to sacrifice her virginity, then, by that very act, which is more powerful than words, she has fulfilled her promise; and it is presumed that an honest woman would do this with the hope of a future marriage (1). Regarding public reputation and prolonged affections, the same author affirms in Decision 3, paragraph 17: "A long and continuous familiarity between those who are betrothed, has brought about a public reputation of a marriage already perfected, which must be carefully considered, and no exceptions are admitted against it (that is, against these preceding indications) (2)." Therefore, since there are very strong conjectures in Vicenza that suggest a marriage between this young woman and John, the opinion of the Episcopal Court, which judged that no such marriage existed, seems to be incorrect. What was argued against the existence of a marriage for John was this: First, it was noted that he had not actively sought her consent; the authority in favor of his consent was not freely given. The promise made by him was made in many ways, but nothing of this was known to those in Vicenza. Therefore, the pastors should warn young women about such matters. For husbands often reason in this way: "If my dearest girl does not want to marry me, as will be evident from what she says..." (2). And even this decision does not favor Vicenza: for it deals with a sin, namely, that after the loss of virginity and conception, if a marriage is not celebrated before a priest, even with the exchange of rings, the woman could have a great reason to blush, lest she be abandoned by her husband, who, after the marriage, could safely have relations with her, having not spoken to her about this for three years? And in my opinion, the general rule does not favor this; for prolonged affections, at least when spoken of, clearly indicate a will to marry (1). Many Doctors cite this opinion. It must be noted that marriages are not proven, unless there are other aids to prove them. And the same is said about reputation. Concerning the young woman, to whom the suitor was speaking, the author states: "Unless it is clearly and conclusively apparent that the suitor desires marriage..." Decision 50, paragraph 2.

[*Latin ed. p. 313*]

MARRIAGES 313. To establish betrothals, which, as they foreshadow the future marriage, deprive the parties of their natural freedom, it is not sufficient to have a simple intention and desire, but certain and evident proofs are required, so that it may be clearly apparent that there is a formal agreement of both parties (1). It cannot be said that betrothals exist solely on the mutual consent and free will of both parties to enter into marriage (1). (1) Sánchez DÌ, *Matrim. Disp.*, V, n. 1, states: "It is necessary to have a mutual promise for betrothals to be valid"; and the reason is that,

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since betrothals precede marriage, which both parties desire to enter into, they necessarily require a mutual promise, and both bonds are sufficient. However, it is sufficient that the promise of one party be tacit, through certain signs that indicate the promise itself. But: 1. What if one party gives his word for the marriage, promising, but the other party does not explicitly accept the promise, but merely asks, "Is it to your liking?" or says, "Thank you for the offer"? 2. Because words have the force of obligation, insofar as they express internal consent, and contracts derive their validity from intention. 3. Because this is a particular obligation, which the law imposes on a person by his own free will; but the obligation of the law depends on the intention of the legislator. In the external forum, a person cannot be bound by a judge unless there is evidence of intention; for in the external forum, the intention of the parties is not considered, since it concerns the Church, but rather the common understanding of words; and both parties are obliged to understand the words in that sense in which they are usually understood by those who use them correctly. 3. Is the party who gave his word obligated to enter into the marriage, while the other party is not obligated at all? Answer: Either the promise of marriage is made *pro bono* (for the benefit) of the other party; this acceptance is considered a gratuitous act, and not a reciprocal promise, and therefore, are betrothals of this kind to be considered valid? Answer: The Doctors disagree. However, the more probable opinion holds that betrothals are valid in this way, even if the other party does not explicitly reciprocate, because the acceptance is considered a true promise, even though it is not the kind of reciprocal promise that is required in binding contracts. If 1. The other party accepts the promise, but does not reciprocate, is only the promisor obligated, and are the betrothals valid, or are they not valid because they do not obligate both parties? Answer: In this case, only the promisor is obligated, not the one who accepted the promise, because betrothals are those that obligate both parties, or they are not valid at all; but the one who accepted the promise is obligated, not to his own detriment, but so that he himself may also be obligated. But 2. What if the one who accepts the promise intends, through those words, to reciprocate the promise of marriage? In this case, the acceptance is not a free act, but a reciprocal promise that obligates the promisor. If 2. Is a reciprocal promise from the other party absolutely necessary? Why, while it has not been accepted, the prior promise is not effective for entering into marriage, because it is not truly binding, and the promisor can be safe in his conscience. Answer: It must certainly be held that a reciprocal promise is necessary. 1. Because ambiguous words, according to the intention of the one who utters them, are understood in the sense that the promisor intends. The promise of marriage is not a gratuitous

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act.

[*Latin ed. p. 314*]

Indeed, these proofs are lacking in the matter, and it is merely a simple declaration of intent; for the proofs cannot be derived either from witnesses, nor from John and Vincentia, nor from this defamation. Not from the first chapter; for not one of the adduced witnesses speaks of such a promise, but they merely testify that John was intent on marrying Vincentia; for one says that he knows nothing of such a promise; another, that he never heard anything of such a marriage; a third, that John was averse to marrying Vincentia, which he affirmed was for the sake of honor. Certainly, two witnesses affirm that John, despite his father's will, was steadfast in his intention to marry Vincentia. But this reveals nothing other than John's intention, not the beginning of a marriage (1); and that John's intention was unchanged, is confirmed by the witness Ade omnigena digno (2). Therefore, witnesses are brought forward in vain to prove the existence of a marriage. A gift is a free and liberal donation, but a contract is a burdensome agreement, which therefore has an implied condition, if the other party also obligates himself; and therefore, if one party does not obligate himself, no obligation arises from the prior promise. Furthermore, it should be added that while a contract is being celebrated, before either party obligates himself, the contract is not yet perfected; but before the contract is perfected, either party can freely withdraw (1). Moreover, many Doctors teach that even an intention expressed in words does not constitute a marriage. Hear Coscu, lib. cit., Decis. 41. From these words (that is, that Nicholas often manifested his intention of marrying the aforementioned Angel, or that he desired her to marry him), no promise of marriage can be inferred, if they do not express a perfect and future will, and are therefore not suitable for establishing a marriage. The definition of marriage itself better proves this. (2) Indeed, Doctors teach that, on account of fornication by the bride, whether preceding the marriage or subsequent, the bride can dissolve the marriage, even if the bride was forced. For in such a case, there is a notable change on the part of the bride, since she becomes notably less worthy, and it would seem shameful to the husband to take such a wife. This is certainly true if the bride voluntarily committed fornication, especially after the marriage. It does not, however, contradict what is said in Chapter 25, concerning oaths: "If anyone swears that he will marry a certain woman, he cannot oppose fornication that preceded, but subsequent fornication, so that he will not marry her; for this text must be understood of fornication that was known to the groom before the marriage took place; but with this knowledge, he is entirely bound by his oath, and he must be said to have

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forgiven the fornication."

[*Latin ed. p. 315*]

P 5I > And what of John himself? He has always, and consistently, denied that he had bound himself in a betrothal with Vincentia. The woman, of course, affirms the contrary, but she has never been able to support her claims with any plausible reason. For, as to whether John was the one who committed the act of carnal intercourse with Vincentia, under the pretense of a future marriage, the matter is very uncertain. Indeed, 1° it is established by the testimony of witnesses that this act was not committed solely by John, but also by others. 2° It was not only John who enjoyed the friendship of Vincentia, but also other young men who frequented her house, whom her mother did not reject, saying, "She is a dish for all" (era piatto per tutti). For this reason, in this case, the woman's honor is lacking in every respect (1).

Furthermore, a betrothed man can dissolve the betrothal because of embraces, touches, and immodest embraces if the betrothed man frequently has such things with another woman, so that the betrothed woman's kisses and embraces, and similar acts, are clearly and openly violations of the betrothal; for such actions inspire horror; and the betrothed woman is considered to be living immodestly; therefore, the words are given: the betrothed man justly withdraws, and the incontinent betrothed woman becomes a wife who cannot live with him without great dishonor. Experience shows that wives who are incontinent become the most unhappy, and justly give cause for complaint; therefore, the betrothed man can justly dissolve the betrothal because of the fornication of the betrothed woman, even if he himself has committed fornication, because fornication is a greater evil than any other form of impurity.

Therefore, John rightly and lawfully withdrew from the betrothal with Vincentia, even though he had contracted it, 1° because, in fact, the act was committed by a woman, and not by a man, which is a very shameful thing for a man to lead such a woman; 2° because the fornication with Vincentia was attributed to others, and not to John alone. Furthermore, it must be added that, because of the fornication of the woman, and not of the man, the offspring is rendered uncertain.

However, it is permissible for an innocent betrothed woman to withdraw from the betrothal with a fornicating betrothed man. 1° If the betrothed man has been able to make the betrothal, he must explain how, where, and with what words it was contracted; he must bring forth the cause in the cause of truth. For, when fornication has occurred, and the man is clearly eager to preserve his honor, he must say what he said. And: The testimony of the witness without the rendering of the cause does not prove anything. L. Only one fornication of the betrothed man is sufficient to discover this; for it is reasonable for the betrothed woman to fear that she will have a

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child that is not notable.

But you will say: Is it not more difficult to restore the betrothal of Vincentia, who affirms that she was seduced by John?

3° Furthermore, if kisses, touches, and embraces have been given under the pretense of marriage, the betrothal can be dissolved.

[*Latin ed. p. 316*]

516. ON MARRIAGE. 3. It is to be noted that the author of the fornication was John, and therefore, Vincentia could hope to be taken as his wife, when a reliable witness, who had exerted every effort to bring about the marriage, testified that John absolutely did not wish to enter into marriage, citing, indeed, reasons of honor or propriety. If, therefore, Vincentia consented, willingly and of her own accord, then, in the case of one who willingly and knowingly consents, no injustice is done. 4. However, the argument derived from public opinion and the statements of the parties does not suffice to impute the crime of rape to John, with the effect of establishing a marriage, as the Rota in Maioriaen declared before Bussio on April 9, 1757. And rightly so; for it is a question of imposing the most serious obligation, which is marriage, to which a sacramental bond is attached; and for which the most serious and evident proofs are required, as everyone knows. Therefore, it seems impossible to doubt the justice and validity of the Episcopal judgment. After considering these matters, the Congregation of the Council, in response to the question: Whether the judgment of the Curia O. should be confirmed or annulled in this case, decided: That it should be confirmed, and furthermore. From which, the following may be gathered: 1. A mere proposal to enter into marriage does not, by itself, create the obligation of betrothal. 2. To establish such an obligation, it is necessary that there be a mutual mention and expression, by some sensible sign, of the promise of a future marriage. 3. Public opinion and rumors, unless other supporting evidence is present, are not sufficient to prove the existence of betrothal. 4. Betrothal, in order to have legal effect, requires clear and undeniable proof of a mutual, simultaneous promise made in the present, that is, proof that is both valid and perfect in its own kind. Resp. often cited. Consci. Decis. 49: "From constant familiarity between a man and a woman, rape is not presumed to have occurred solely from the assertion of the woman who was supposedly raped, especially if the act took place in her own home, and even if it was prolonged over a long period of time, it does not prove that they entered into marriage, especially if the man denies having committed the rape under oath. Betrothal, especially if the woman also had familiarity with other lovers."

[*Latin ed. p. 317*]

SEPARATION. On the 27th of January, 1866. A summary. After a solemn marriage celebrated in the city V., between Aloysius and Catherine, and

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after having had five children, when the faith of the marriage and the common harmony between them had persevered for twelve years, domestic tranquility began to be disturbed in the year 1863 by certain initial disagreements, which soon led the minds of the spouses to complete separation and hatred. After the discord had become public, Aloysius approached the Parish Priest on the 18th of June of the same year, and, accusing his wife of adultery, demanded a separation. The Parish Priest, with the utmost diligence, as was fitting, tried to restore peace and harmony between the spouses; but when he could not succeed, neither by himself nor by others, he brought the matter to the Episcopal tribunal, so that, with due regard to the law, the cause of the requested separation might be examined. Hence, legal proceedings began, and on the 17th of the aforementioned month of June, 1863, being questioned by the judge, Aloysius stated the following regarding the reasons for the requested separation. I declare that, for the space of 13 years, during which I have been united in marriage, I have never been seized by jealousy towards my wife; but things have seriously changed in the last year. Since I am an artisan, I have many workers, to whom, however, I forbade entry into my house. Among them is Titius, who has been present for 16 years, and who established a shameful friendship with my wife, which I discovered on the seventh of the current month of June. For when, at approximately the eighth hour after midday, I returned home, I saw this Titius, who was leaving the wall, saying: "I am the one who is reading."

[*Latin ed. p. 318*]

318 SEPARATION-S (MlOflí il foglio). I returned, and I encountered my wife, who did not utter a word. Having left the house, I gave her letters of this nature: "Catherine, do not leave, if you wish that I, as before, allow you to kiss your children." Two days later, I was led back to the house, and I said to my wife: "Wretched woman!" But she did not respond, nor did she stir, but rising, she fled from the house. The following day, I dismissed the servant girl, who, in turn, responded: "I foresaw this." After receiving the testimony of Aloysius, on June 8th, the woman was informed by the judge that she would be brought to trial by her husband for violating the conjugal bond; to which she responded that she was entirely innocent of the alleged offense, and that she would willingly submit to the most rigorous judgment on the matter, so that her innocence might be fully demonstrated. Furthermore, she stated that she was astonished that her husband would reproach her for breaking the conjugal bond, when he himself had already been married to several other women, and who, some years ago, infected his wife in El-Kef with a disease, for which he was severely reprimanded by Doctor P., who, having become aware of the matter through the words of Aloysius himself, treated both spouses. Regarding the events of June 7th, the woman stated as follows: "I noticed that I used to visit my home

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six hundred times, for the purpose of reading the newspaper, as I did on that very day for the same reason. But if, on that day, she entered the dining room (camera di ricevimento), and from there committed crimes, my husband suspected it, and it happened that Titius was considered as my accuser against my husband. Guided by prudence, I left the house and went to my aunt's. I have recounted these things so that everyone may understand why I was compelled to flee from the house." To prove the infidelity of his wife, and her suspicious or more intimate relations with Titius, the plaintiff, Aloysius, first designated four, and then eight other witnesses, who, with the exception of two, whose residences I do not know, were examined under oath. However, all of them testified that Catherine was constantly at home, diligently attending to the education of her children and household affairs. They added that they had indeed seen Titius often entering Aloysius's house, both when the master of the house was present and when he was absent; but they did not suspect any evil, because Titius was among the workers.

[*Latin ed. p. 319*]

In the thirty-ninth session, the witnesses were examined concerning Aloysius, and his brother, and it was observed that neither had ever seen any ambiguous sign, or indecent act, nor had heard anything that could be considered dishonorable. A certain Callotta B., dissenting from the others, related some things that seemed to indicate a familiarity between Catherine and Titus. But how much credence can be given to this woman, who, according to the testimony of the parish priest, lived a life of concubinage? While the witnesses were being examined, the husband did not cease to spread scandalous rumors about his wife among the people, and he denied the wife the allowance for support, which had been assigned to her during the legal proceedings, until she returned certain articles of clothing that she had taken from the house. Furthermore, under the pretext of being a governess for his children, he brought a certain young dancer, sixteen years of age, into the house; this caused such a great scandal that the civil authorities, as was necessary, investigated the matter and expelled the dancer from Aloysius's house; however, he, evading the vigilance of the authorities, brought her back to his home shortly thereafter. Moreover, he did not hesitate to boast openly to his friends that on the night he drove his legitimate wife from the house, he had lain with a servant girl; and when questioned by the judge, he did not dare to deny it openly. Regarding his relationship with the dancer, his condition had progressed to the point of impotence, so that he did not hesitate to utter these words during the judicial examination: "Whether the ecclesiastical court calls me an adulterer, will be known from the dancer's testimony." Nor do I have to confess whether or not I have had relations with such a girl: no one can compel me to break my vow of chastity. Thus far in the

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proceedings, the husband, Aloysius, requested that other witnesses be examined regarding Catherine's infidelity, but the matrimonial tribunal, considering itself sufficiently informed, rejected Aloysius's request, and on October 19, 1863, pronounced the following judgment: "Having seen and considered the only accusation made by the husband against his wife, namely, her conjugal infidelity; and since this accusation is based on a fact that, according to the testimony..."

[*Latin ed. p. 320*]

520. REGARDING THE SEPARATION: On June 7, 1863, Titius was discovered in a remote room, while his wife was found in another room. Considering that the Accuser voluntarily confessed that, until that day, he had never suspected his wife of anything; that his suspicions concerned a man whom he had kept in his service for many years; and that he had never suspected anything about this man, even though he had found him in the house several times. Considering that the circumstances of the place and time in which Titius was discovered do not provide any reason to suspect him, since the Accuser, knowing and seeing him, frequently visited his house; and that these circumstances of place and time could not have aroused suspicion, as the Accuser himself states that at that moment he was not disturbed in any way, neither by Titius nor by his wife; but rather, after such a discovery, he associated with Titius on the road, and behaved towards him entirely amicably, as before. Considering that the witnesses presented by the Accuser to prove the wife's friendship with the aforementioned Titius, up to the time in question, did not favor the Accuser in any way, but rather opposed him; while all testified to the wife's chastity and honesty. And that the only witness who does not favor the wife, made depositions that do not provide a solid basis for suspecting adultery, and was, furthermore, excluded from giving testimony due to the immoral life she leads. Seeing that the Accuser himself voluntarily confessed to the shameful relationship in which he holds the dancer; and that this relationship is such that it must be called an adulterous relationship. This Tribunal decreed and pronounced that, as it decrees and pronounces, the petition of the Accuser Aloysius against his own wife Catherine must be rejected, and that he is bound to receive her again; saving, however, to the wife all her rights to constitute herself as the plaintiff against her husband, in order to obtain a legal separation due to the unjust abandonment by her husband. Considering himself aggrieved by this judgment, the Accuser...

[*Latin ed. p. 321*]

SEPARATIONIS T HORI 321 days elapsed. Firstly, he presented a complaint of nullity against the episcopal judgment, alleging the neglect of the examination of witnesses, and he requested from the Apostolic See that, after annulling the previous sentence of the bishop, it should order the

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institution of a regular process of proof, with the obligation of hearing, under oath, the witnesses presented by him, who should be examined along with all others. Then, on the very same day, lest perhaps the complaint of nullity be disregarded, and prejudice might arise from the course of events, he filed an appeal from the adverse judgment. While the judge of the first instance had granted the parties a period of 30 days to complete the petition of grievance and the response to the grievance, the Sacred Congregation of the Council wrote to the bishop, requesting that he report on the matters presented, and in particular, that he explain why the witnesses had not been heard, and whether it would be advisable for them to be heard before the continuation of the cause in the court of appeal. On March 31, 1864, the bishop transmitted the acts of the process, and the grievances of the spouses, together with new information and documents, to the Sacred Congregation of the Council, and he did not fail to note that the plaintiff had alleged new facts in the first instance, which, however, were in open contradiction with what had already been presented; furthermore, the assertions contained in the appellant's grievance were entirely foreign to the truth, namely that the wife, Catherine, had confessed her fault before the parish priest, and that she now resides with a woman of bad repute. The bishop concluded that it would be utterly useless to question other witnesses, both because of the substance of the matter, and because even if the plaintiff, through new witnesses, could prove the adultery of his wife with Titus, he would never be able to clear himself from his own dealings with the dancer; moreover, the dancer herself has confessed. Having received these letters, the parties were informed of the possibility of presenting further arguments, if they wished. The woman referred to the previous matters, adding only that the dancer had been a concubine dismissed by the husband, and was pregnant, so that the birth would not occur in her own home. The husband, repeating the old accusations, added the deposition of a former female servant, which was very unfavorable to the wife's reputation. However, the bishop noted that the same female servant had previously been subjected to a judicial examination, and had revealed nothing but favor.

[*Latin ed. p. 322*]

322. The separation of the handmaid from her mistress, and the entire document being signed by unknown witnesses, deserve little credit (1). WHAT WAS SAID ABOUT ALOISIUS. After this narration of facts, a few observations are made regarding the matter, both concerning the presentation of new witnesses and concerning the merits of the case. Regarding the former, it is gathered from Chapter 15 of the Causes, concerning witnesses, that three presentations of witnesses can occur in a case, as it is stated: "In ecclesiastical, or civil causes, witnesses should not be presented beyond a third time; indeed, with just cause, and with the formalities of

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the law, a fourth may even be admitted." Chapter 55 of the same title states: "Witnesses should not be presented in a case beyond a third time, unless it is demonstrated by him who requests it, by an oath, that he has not, either by himself or by another, suppressed or concealed the testimonies, nor has he been questioned, nor has he sought the fourth presentation through deceit or any artifice, but because he has not been able to obtain the witnesses he desires anew." Therefore, in this case, it was permissible for Aloysius to present his witnesses for the first and second times; he was not prohibited from presenting others, especially since the case was not concluded. (1) Therefore, he was rebuked for offering testimony, based on the well-known legal axiom: "Once a liar, always a liar." 2. This is why this handmaid could have been corrupted by Aloysius, and there was a very serious suspicion. 3. Because, having overlooked all of this, he was the only witness. But divine law proclaims: "One witness shall not testify against another." Deuteronomy 19:15. Canon law proclaims: "No case shall be concluded by the testimony of one witness, even if it is legitimate." Cap. Licet 23. Civil law proclaims: "We manifestly decree that the testimony of one witness alone should not be heard, even if it shines with the highest honor for the court." L. Iurisiurandi Q. cod. de testibus. (2) From this, everyone can understand that the aforementioned legal formality in the fourth presentation of witnesses involves an oath to be given judicially concerning three things: 1. That the testimonies, that is, the depositions of witnesses, whether for his own side or for the opposing side, have not been suppressed or concealed, either by himself or by another, perhaps realizing that they would not be favorable to him. 2. That he has not been questioned, that is, that he has not learned or discovered anything, because at that time, the danger and presumption of suborning witnesses could easily arise if those witnesses could be presented after already being questioned or having their testimonies known. 3. That he has not sought the fourth presentation through deceit or any artifice, that is, that he is not prolonging the lawsuit maliciously, until someone dies or withdraws, but because he has not been able to obtain the witnesses he desires anew.

[*Latin ed. p. 323*]

SECTION 523 ON THE LIMITS OF EVIDENCE. AGAINST THIS POINT OF THE QUESTION, IT IS SAID. But it is not new in law to deny further, beyond those that are necessary, the production of witnesses, both because the excessive number of witnesses must be restrained, and lest, under the pretext of desired proof, lawsuits be unduly prolonged. C. 36. P. t. Where the Glossa ad V. Effraenata and c. 16 of the same book, ad V. Productionem, state that even civil law refers the matter to the prudent judgment of the judge, whether to hear or reject others, lest the testimonies of witnesses be produced solely to delay the final judgment. Although some laws define the largest number of witnesses, yet these constitutions of princes restrict

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this permission to a sufficient number of witnesses, so that judges may restrain, and allow only that number of witnesses which they have considered necessary; lest the excessive power to harass people, and the superfluous multitude of witnesses, prolong the proceedings. L. 1. Although the laws concerning witnesses (de Test.) provide for this, nevertheless, since both laws refer the matter to the judge's discretion, allowing him to hear only those witnesses whom he considers necessary for the proper and clear judgment of the case, the Episcopal tribunal, having indeed heard a sufficient number of witnesses, and thereafter, the plaintiff not producing new witnesses who would testify differently or otherwise, or producing those who have alleged untruths and falsehoods, or those who contradict the first testimony given, rightly refused to hear other witnesses in the case.

THE REASONS FOR THE VERDICT ARE MERITORIOUSLY OBSERVED. It has been observed that Aloysius was condemned by a well-known principle of law: "The defendant is acquitted if the plaintiff does not prove his case"; and everyone in the Episcopal Court will easily understand that he has not at all proven his case, for the reasons given by the Judge. (1) RR (1) Indeed, neither the antecedent circumstances, in order to briefly summarize the argument, nor the facts, nor the witnesses brought by the plaintiff himself, nor the subsequent circumstances, provided any support for him: not the antecedent circumstances, because Aloysius himself readily confessed that he had never suspected his wife's honor for a period of 13 years; not the facts, because they were indifferent and could not offer any reason for suspicion to a sensible person; not the witnesses, because, except for the woman of bad reputation, who might have been a suitable wife for Aloysius, all the others gave very clear testimony regarding Catherine's honor, both in general and in particular, as far as Titus is concerned; the subsequent circumstances, however, alleged by Aloysius, were clearly condemned by the Episcopal Tribunal as the most vile calumnies.

[*Latin ed. p. 324*]

324. SEPARATION FROM THE MARRIED STATE. Even if the accuser could sustain his action with the testimonies of new witnesses, it must be admitted that his request was not based on those things which are established by law concerning separation from the married state in the case of adultery. For, although, in general terms, adultery consummated and committed by one spouse gives the other spouse the right to institute a perpetual divorce, this right is lost if the other spouse is found guilty of the same crime. You have stated that a certain man, having dismissed his wife without the judgment of the Church, because he had been led to believe that she had committed adultery with a certain relative, was bound by an excommunication; but the woman did not remain separated, but took a husband from another man. But if it is certain that the woman committed

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adultery, the aforementioned man is not obliged to receive her, unless it is established that he himself committed adultery with another. Pope Innocent III explained the reason for this in *Glossum in Decreta*, saying that indeed mutual crimes extinguish each other. This is consistent with the law of the Caesars, *L. Viro atque uxore, ff. solut. matrim.* (1). Nor does it matter whether one has offended the other first, or more often, or more gravely, as affirmed by Sánchez in *De Matrimonio*, Book X, Disputation 6, paragraphs 5, 6, and 8. Indeed, a crime committed after the judgment has been rendered prejudices the spouse for whom the judgment was issued, as held by Fagnanus in chapter 5, paragraphs 9 and 10, and by Reiffenstuel, 4, paragraph 8 (2). Therefore, if, because of the prior infidelity of a spouse who was previously innocent, a judicial sentence is issued, and that spouse is permitted to live separately, he or she is compelled to cohabit because the crimes compensate for each other.

(1) Angustinus, *Lib. 1. De Sermone ad Conjuges*, chapter 28. "Nothing is more unjust than to dismiss one's wife because of fornication, and then to be convicted of fornication himself. For it happens that in judging the other, you condemn yourself; for you do the same things that you condemn."

(2) For this reason, if Catherine were the accuser against her husband, and after a judicial sentence in which it was determined that she could live separately, she fell into adultery, then there would no longer be any basis for separation, because the crimes compensated for each other.

[*Latin ed. p. 325*]

SEPARATIONIS THOR! 52J The following occurred (1), and the judgment of the Episcopal Tribunal appears even more just, which denied the separation from the table and bed, which Aloysius demanded without any legitimate and proven cause. Indeed, the very same man, while accusing his wife of infidelity in marriage, indulges in adulterous loves. Considering these matters, and concerning the doubts: 1. Whether there is a place for the examination of new witnesses in this case. 2. Whether the judgment of the Episcopal Court should be confirmed or overturned in this case. The Congregation of the Holy Council responded: To 1. Negatively. To 2. Affirmatively, and furthermore. 1. In cases concerning divorce, (and the same is said concerning others in which the number of witnesses is not established by law) the judge is left to his own judgment and conscience to hear the number of witnesses that he deems sufficient to reveal the truth. 2. To grant a divorce on the grounds of adultery, it is required that (1) Aloysius had no true action against his wife, 1. because she, by the very act that expelled her as a legitimate wife, committed an action against her husband, if she herself committed adultery, which is an imperfect adultery, that is, one in which she had intercourse with him while he was in a state of impurity; 2. because the subsequent generation was not lawful, given the custom with the dancer. But you ask: 1. Could Catherine have had an

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action against her husband for those adulteries she committed? Answer: Affirmative. For adultery is sufficient for divorce only if it is perfect and consummated, but did the husband consummate? You ask: 3. Could Catherine have had an action against her husband if she herself had forgiven the adultery? Answer: More probably negatively; the reason is 1. because, if she had forgiven, it would not be necessary to consider the return of things. 2. because reconciliation of marriage revokes the state of marriage, and if she revoked it, it is as if there were no forum for conscience; for it matters not whether the fornication was secret or public, since to the spouse it is known that the fornication was committed, and if, after such forgiveness, she was not adulterous, but the husband was, then there is no place for compensation, and the action is legitimate, according to this judgment, to seek a separation from the table and bed. You ask: 2. Could Catherine have had an action against her husband if she were in a similar condition, if she were publicly fornicated? Answer: Negatively, as far as the substance of the matter is concerned, because if she publicly committed adultery, the best compensation is given by law; therefore, if Catherine had sinned, she should have forgiven, if she demanded a separation.

[*Latin ed. p. 326*]

526. SEPARATIONIS CAUSAE, either those that definitively prove, for example, the confession of adultery; or a suspicion so violent that it provides moral certainty of adultery (1). 3. If both spouses have committed adultery, and neither has forgiven the other, there is no ground for divorce, because there is mutual fault; and this is true even if one adultery is concealed. (1) The first part of this corollary follows from the very nature of the matter, and from the penultimate section on adulteries: We command that unless it has been established to you, either by evidence of the fact, or by confession (that is, by a confession made under suspicion), that the woman has committed adultery spontaneously, you must compel her to return to you. The second part is affirmed by St. Jerome in Chapter XIX of Matthew, and is referred to in chapter 32, question 1. The Lord said, "Wherever there is fornication, or suspicion of fornication, the wife is freely dismissed." And indeed, since adultery is among those crimes which are committed in secret and entirely hidden, it is very difficult to prove; and it cannot truly be proven, but is concluded from evidence sought through presumptions. This is so true that, even if someone is found in the act of the crime, it would not, with metaphysical certainty, be established that adultery has been consummated, which is what is required for divorce. However, this suspicion must not be just any suspicion, but a violent one, and of the kind described in the chapter on presumptions, that is, only when a naked person is seen lying with another naked person in the same bed, in secret places and hidden from others, at times chosen for such purposes. We respond that, from such a violent and certain suspicion of

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fornication, a sentence of divorce can be pronounced. For such a suspicion, based on the facts presented, would lead any prudent man to judge that adultery has occurred. Otherwise, adultery would never be proven, except for the confession of adulterers. Therefore, a divorce cannot be granted on the basis of touches, embraces, and kisses, even if they are accompanied by the pollution of one's own or another's body, because although these are grave sins, they do not perfectly and completely violate the right of marriage, since the flesh of one spouse is not divided from the other through intercourse with a third party. In matters as serious as divorce, a strict, not a broad, interpretation must be made. However, when the suspicion is not violent, but merely probable, the innocent spouse cannot, either in the internal or external forum, separate from the marriage, or deny the marital debt, because when the spouse about whom there is suspicion is in possession of the marital right, he cannot be deprived of it on account of mere doubt or suspicion; for in doubt, the condition of the one who possesses the right is preferred. And the canons proclaim: "Every suspicion should rather be rejected than approved or received." (1) Canon 9, Council of Trent.

[*Latin ed. p. 327*]

On the 13th of September, in the year of Our Lord 1862. With divine favor. In the City of S, in the Diocese of A, there is a Collegiate Church, distinguished by the title of the Most Holy Rosary, which was erected from a former Parish Church by the Most Holy Pope Benedict XIV in the year 1742, and which consists solely of the dignity of a Priory and eight Canons, "who, with the aforementioned Prior (these are the words of the founding Bull), shall constitute the Chapter of the aforementioned Fraternity of this Church, which must be a Collegiate Church, and also a Parish Church, as will be specified below, and shall personally reside therein, and at the appointed times shall recite, chant, and sing the canonical hours, both morning and evening, as well as the Conventual Mass and the High Mass, and other divine services, with due attention of mind and with the observance of ecclesiastical discipline; and shall attend the various offices, both morning and evening, of this kind..." respectively.

However, from the very beginning, since the time of its erection, it has happened that the Prior, for which no reason or origin can be found, has never attended the choir for a single week with the other Canons, but has only celebrated the Conventual Mass on the most solemn feasts of the year. This, however, caused great distress to the majority of the Canons, and during the last vacation of the Priory, due to the death of Aloysius M. on the 27th of June, 1861, they began to consider the possibility of abolishing this exemption; and since, by a Papal Bull, Joseph M. was soon appointed as the new Prior, the aforementioned Canons inquired of him whether he would, according to the original institution, attend the choir with them.

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However, when the new Prior refused to submit to this obligation, the Chapter humbly petitioned the Supreme Pontiff, explaining that the current Prior, who had recently obtained possession of his prebend, knowing that the Chapter...

[*Latin ed. p. 328*]

528 CONCERNING CHORAL SERVICE: The intention was to eliminate the abuse whereby the Prior himself, for several weeks, did not participate with the other canons; now that the institution has been received, he seems more inclined to continue [the abuse] than to eliminate it; therefore, both the Prior and the Capitulars find themselves in a situation where the Supreme Pontiff must decide and order whether the Prior should also participate in the choral service for weeks, or not. With the See vacant, petitions were sent to the Vicarius Capitularis for information and a vote, and so that, after hearing the Prior and the Chapter in writing, and after transmitting a copy of the Chapter statutes, and other documents relevant to the matter, he might render a judgment on the matter of proper procedure. Therefore, the Canons, having held a Chapter meeting on February 20th of the current year, arrived at a decision by a majority of five that the Prior, together with the others, should be obligated to participate in the choral service; however, two, while agreeing with the Prior's opinion, protested that the preceding custom should be maintained. These actions were declared null by the Vicarius Capitularis, due to the Prior's presence in the Chapter and the public nature of the votes in the aforementioned resolution; and that resolution was completely rejected. Furthermore, another meeting was held on March 6th of the following month, in which the previous decision was defended and confirmed in turn by both dissenting parties, with their own arguments presented in writing. All of these matters were transmitted to the Sacred Congregation of Rites in a letter dated March 19th of that month, to which a copy of the Chapter statutes was also attached. As for his own opinion, the Vicarius states: "Lest I seem to favor one side of these disputants over the other, since the opinions of legal experts presented to us are divided, I believe it is most wise and prudent to submit this question, together with the canons themselves, to your entirely unappealable judgment. Despite this, it should be noted that a document was found in the records, in which the same Vicarius Capitularis, after hearing the Advocate of that ecclesiastical court, favored the Prior's exemption from the weekly choral service, and concluded that nothing should be changed, and that the Prior should be exempted from such an obligation as before."

[*Latin ed. p. 329*]

DISCUSSION OF SERVICES: A SYNOPTIC VIEW OF EXEMPTIONS. It seemed indeed consonant with the nature of choral benefices that the

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present situation, in which the prior diligently attends to daily divine offices, should prevail (Chapter last, Dist. 92). For a benefice is granted on account of office (Chapter last, of Rescripts, No. 6). However, in order to establish an exemption from choral service in this case, custom and ancient observance, which was called "immemorial," were brought forward. It was reported that from ancient times, the memory of which did not exist, or even from the very erection of the collegiate church, the prior had never participated in the choir with the other canons. Nevertheless, it was observed that such custom and ancient observance possess only the force of a better title. The Doctors commonly, and the Sacred Congregation, in the case of the Perugia Chapel, on September 15, 1828, and on November 24 of the same year. Moreover, a privilege granted by the Prince has force (Gonzalez in Regula VIII, Conc. Gloss. 33, No. 4), which is consistent with Corradus de Prax. benefic. lib. 2, cap. 10, No. 94, and the Rota in decisions 12 and 117, No. 13, as was fully reported in the Italian Procuration of February 25, 1826, § where these words are read: "In the Cardinalitium Congregations, custom is usually given much consideration, so that what is customary is not disturbed, as De Luca de Parochis states, disc. 14, No. 1." Indeed, according to Riganti in Regula 2, Cancel, No. 138 and following, "it is permissible" for an Apostolic privilege to have the same force as the "immemorial" custom, "yet this one is of greater virtue and efficacy, since through it one can allege a better title from the world." It is clear to no one that an Apostolic privilege, if it existed, could legitimately exempt the prior of such a collegiate church from choral service: in Nullius Sublacen. July 18, 1807. Furthermore, it was observed that such custom derives its origin from a certain feeling of gratitude towards the first prior, who was held in the highest regard by the college.

[*Latin ed. p. 330*]

330 The choral service is a worthy benefit; and it has been maintained by the favor of the successors of G., by the patience of the Chapters, and by the tacit consent of ecclesiastical authority, which for more than a hundred years has never decreed anything to the contrary. Therefore, this observance should be especially upheld, particularly since it is long-standing and perpetual, which is generally the best interpreter of the law and the will, as stated by Piton, *de contr. Pnt.*, 17, no. 13; by Cardinal de Luca, *de Iurepatr.*, disc. 60, no. 11; namely, by those who lived when the erection of the collegiate church was requested; and thus the obligation of the Prior was interpreted, so that he was not bound by the weekly service. They do not claim that this observance lacked reason, even because the obligations in the aforementioned collegiate church are greater for the Priorate than for other Chapters. For the Prior is obliged to sing Mass on all the most solemn feasts of the year, and to celebrate sixteen more Masses each year than the other canons. Indeed, the Conventual Mass is a grave obligation,

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and a principal part of the divine office incumbent upon the canons, so that the canonical hours are ordered for it, as stated in *Cap. Cum Creatura* concerning the celebration of Mass, in *Gavant in Rubr. miss.*, vol. 1, part 1, p. 7, rubric 2; and by the Holy Congregation of Councils in *Mazzarien*, March 18, 1826, to 8 canons. From this, it is argued that the choral obligation imposed on the Priorate is greater than the choral service incumbent upon the other canons, and that it offers a certain compensation for his exemption from the weekly service. Given these premises, it is considered that nothing should be made of certain complaints made by some of the canons of the past, which the present capitulars, who advocate the contrary, seem to want to imply, in order to prove that the aforementioned custom was sometimes interrupted. Furthermore, these complaints and adverse claims are in no way proven, and moreover, certain testimonies or documents should have been presented to support them, which the opposing canons have not yet demonstrated. But even if they had sometimes complained, it would also be necessary to conclude, in a hypothetical situation, that these complaints were made at a legitimate time, or before the custom had been fully established; otherwise, they should be completely disregarded in order to undermine the observance.

[*Latin ed. p. 331*]

CHORAL SERVICE 33, according to Engel, Coll. Iur. Canon. II, h. 2, tit. 26, p. 5, no. 34. Therefore, it was considered necessary to conclude either that, from the very day of its establishment, an exemption from choral service had been granted to the Prior of the Collegiate Church by privilege, or that it had been subsequently acquired through legitimate custom. For, as the Doctors state, everything that can be acquired is acquired through custom. WHAT COUNTERACTS THE EXEMPTION. On the other hand, a part of the other Canons held the opinion that it was the nature of all benefices to be formally instituted for the sake of ecclesiastical office; and that this office, established in the provision of services in Cathedrals and Collegiate Churches, was undoubtedly fulfilled in the choral service. Hence, after the canonical sanctions in chapters four and the final chapter concerning non-resident clerics, and Clement, concerning the celebration of Mass, the Council of Trent, in session 24, chapter 12, concerning reforms, ordered that all Canons be compelled by divine law to perform their offices... and in the choir, to reverently, distinctly, and devoutly praise the name of God through hymns and chants. To these canonical sanctions are added countless resolutions of the Sacred Congregation, which it would not be worthwhile to recount here; especially since the Bull of erection of the Collegiate Church also speaks openly on the matter in question, establishing and ordering that the Prior, together with the other Canons, be obligated to perform the duties of the Collegiate Church. Therefore, to establish an exemption from such an obligation, a legitimate and valid

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Apostolic decree or indult would be required, solemnly sanctioned by law and inherent in the nature of the provision, and it would not suffice to presume it in any way. The extent to which the Apostolic Indult is lacking becomes evident from a similar case: the Choral Service of August 18, 1826, in the Church of Saint Lucy in the town of Sabiniani, granted by the Supreme Pontiff Benedict XIV, in the same year in which the Church of the Most Holy Rosary was erected as a Collegiate Church. Since the Archpriest of the aforementioned Collegiate Church of Saint Lucy in Sabiniani had consented to the erection of the Collegiate Church, undertaking the obligation of serving in the choir only on feast days, he therefore...

[*Latin ed. p. 332*]

352 Regarding the choral service, having been burdened with more serious obligations by Apostolic letters, although he sought support from the Bishop to obtain an exemption, he labored in vain before the Sacred Congregation to obtain the requested exemption. Nor did any opposing opinion seem to be of any consequence; rather, because the same [practice] manifestly resisted the explicitly stated law, and was clearly contrary to the natural obligation of beneficence established by the Holy Canons, it was immediately rejected as an abuse, and could never gain strength over time, since it had been introduced only through corruption of the choral discipline. Sacred Congregation in Perugia, June 21, 1828. Furthermore, in this case, witnesses, namely Canons, would testify that, in past times, the Chapters had not lacked complaints and reclamations against this very practice, from which it would be necessary to hold it suspended; indeed, it could even be completely overturned based solely on such rumors, as Riganti, Reg. Cancell. reg. 4, p. 6, n. 44 et seq. points out. But the Canons urge even further: whatever the nature of the asserted practice may be, they do not hesitate to say that it directly contradicts the decrees of Trent, and therefore necessarily falls under the censure of the Constitution of the Most Holy Pope Pius IV, *In Principis Apostolorum*, which declares any custom whatsoever contrary to the Council of Trent to be null and void. Indeed, as Benedict XIV wisely pointed out in *Institutiones Eccl.*, 60, n. 7, this Constitution encompasses all the chapters of that Council, and renders null and of no effect any custom whatsoever that violates the laws prescribed in those same chapters. Therefore, if it is so clearly established in the context of that Constitution regarding customs that preceded the decrees of Trent, then all the more reason should be given to say the same about those customs that would seek to introduce themselves contrary to already established decrees. Indeed, because of the invalidating decree contained in the Constitution of Pius IV, any possession or practice contrary to it remains immediately invalid, so that a custom cannot even begin to take hold. Cardinal De Luca, in *De Canonie*, and *copia disc.* 33, n. 3, *Adnot. ad Concil. Trid.*, Disc. 1, n. It, and elsewhere. And these things which I

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have noted are in general; in particular, au-

[*Latin ed. p. 333*]

It is necessary to serve! The choral office is a matter that Barbosa discusses in *Officii et Privilegia Episcoporum*, All. 33, numbers 131 and 133, citing numerous authorities. Canons and those who hold offices in cathedral and collegiate churches are, even if by custom or statute, obligated to chant in the choir every day and at all hours. The canons must attend, and no custom can excuse them from serving at all seven hours. However, the argument that a canon who is present in the choir but does not chant, and who, even more, never attends the choir, is a valid one, is refuted by the text of the aforementioned Constitution of Benedict XIV, issued on August 19, 1744, number 24. "Indeed, we know that in some metropolitan and cathedral churches, among the canons, the opinion has prevailed that they sufficiently fulfill their duty by merely being present in the choir, even if they do not join in the singing with the beneficed or mansionary canons. To support this opinion, they often cite long-standing customs, special statutes, or even alleged privileges of the churches. But since this opinion is contrary to the discipline received throughout the Church; and moreover, since this opinion has never been examined by the Congregation of the Council, with the interpretation of the Council of Trent given precedence, and has been immediately rejected and disapproved, even though it was supported by presumed customs and other foundations... it seems that there is nothing left to prevent a few from conforming to the general law." It is clear to all that the practice of the Sacred Congregation of Rites is entirely in agreement with this doctrine: for, of the hundreds of resolutions that could be cited on this matter, it is constantly observed that whenever an exemption from the choral service is claimed by a chapter or canon, either by virtue of a special Apostolic Indult, or because the benefits derived from reduced revenues are seen to be insufficient to support the burdens of the benefice, then the Sacred Congregation of Rites, guided by the most just equity, has usually approved such an exemption, or at least a reduction in the choral service, as appears from the aforementioned *Nullius* or Acts, Volume VIII, page 10, number 22.

[*Latin ed. p. 334*]

334 CONCERNING CHORAL SERVICE. The Sacred Congregation of Rites, on July 18, 1807, considered the following question: "Are the Canons of Saint Andrew obligated to recite the complete canonical hours on Sundays and other holy days by command?" The response was: "No." The Canons were favored by a decree issued during the aforementioned visitation by the Most Reverend Chapter, which had been approved by the Supreme Pontiff Pius VI. However, the same Sacred Congregation consistently rejected a similar request for exemption, whenever it was argued

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based on custom and long-standing observance, as is evident from the case of Setina, January 21, 1786. When the Bishop presented the argument that, as far as human memory extended, the Canons had only recited the complete office on certain feast days of the year, and that the Bishop himself considered it appropriate to require the Canons to recite the complete office on Sundays and holy days by command, beyond the customary practice, the Sacred Congregation responded that the Archpriest and the Canons were obligated to perform choral service according to the Bishop's wishes. Similarly, in Albano, on April 4, 1789, when the Canons presented a long-standing observance as a reason to decline the law regarding complete choral service, their petitions were completely rejected by the Most Reverend Fathers in the Congregation on May 16 of the same year. Considering these and other aforementioned precedents, the following question was presented: "Is the Prior of the Collegiate Church of the Most Holy Rosary obligated to provide weekly choral service in this case?" RESOLUTION. The Sacred Congregation of the Council, having considered the matter, responded on September 13, 1862: "Affirmatively, and moreover." THEREFORE, BE IT KNOWN: I. No Canon is exempt from choral service; as the Council of Trent, Session 24, chapter 12, concerning reform, states that anyone who receives a benefice must, by himself and not through others, perform divine service, for which purpose ecclesiastical benefices were instituted.

[*Latin ed. p. 335*]

VI. It is vain to strive to obtain an exemption from a burden of this kind, solemnly established by laws, when one cannot legitimately and validly present, in one's favor, an Apostolic Indulgence.

III. One must not oppose or disregard the custom and observance in this matter; rather, they must be corrected as abuses arising from a perversion of the natural and legal obligation, so that such a corruption of choral discipline may never be restored.

IV. The observance of such a custom has no validity, even because it is contrary to the decrees of the Council of Trent, and therefore falls under the censure of Pius IV. In *Principia Apostolorum*, which, according to Benedict XIV, *Inst. Eccl.* 60, n. 7, encompasses the aforementioned chapters of the same Council, no customs whatsoever are of any importance which violate the laws prescribed in those chapters.

V. The Prior's custom of being absent from the choir, which our opponent defends, is not only contrary to the general laws of the Church, but also to the special constitutions of this Chapter, which, among other things, stipulate "that the Prior and Canons must personally reside (at the Collegiate Church) and there, at the proper times, perform the canonical hours,

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both day and night... and other divine offices..."

[*Latin ed. p. 336*]

THEOLOGICAL PREBEND. On April 18, 1868. The Bishop C., in his triennial report on the state of his Diocese, dated February 15, in the year 1851, stated that the Canon of Theology, Joseph A., both because of the scantiness of the prebend and because of his poor health, and also due to the lack of students, had interrupted the reading of the Holy Scriptures, prescribed by the Council of Trent, and had never been able to resume them, at least not through a substitute; although, otherwise, the same theologian presided over the Moral and Biblical discussions held in the Bishopric. The Sacred Congregation responded on July 19, 1852, stating that the aforementioned Canon had not, in its opinion, fulfilled his duties, and that if he wished to act according to his conscience, he should present a separate document to the Sacred Congregation, carefully explaining the matter, and requesting forgiveness for the omissions of the past. Diligently following these instructions, the aforementioned Canon submitted a document to obtain absolution; however, he added some observations, with which he hoped that his method of acting would be approved by the Sacred Congregation, not only with regard to the past, but also with regard to the future. The Bishop, in a letter dated October 18, 1854, confirmed the truth of the Canon's statements, and at the same time, highly commended him. Thus, the Canon A. explained that, after obtaining the Theological prebend, he had read the Holy Scriptures in the Cathedral Church from the month of November until the end of June, on each weekday, except for holidays; and that he had not abandoned his duty from the beginning, except when afflicted by a serious illness, by which he was sometimes forced to obtain dispensation from the recitation of the Breviary, and from the law of residence. Having then somewhat recovered,

[*Latin ed. p. 337*]

THEOLOGICAL PREBEND: Although suffering from a pulmonary illness and the inconveniences of advancing age, and having been requested by the Bishop to at least deliver one lecture each month, he refused this office, considering it almost useless, since the very interruption had already made the audience, which was scarce from the beginning, even scarcer. Meanwhile, he stated that he had not neglected other useful duties, especially in conducting the discussions which, at the request of the Bishop C., with the consent of the Chapter, were instituted in his Diocese to combat those errors which are increasingly spread daily through books and public periodicals. He affirmed that he had fulfilled his duty with these discussions, citing notes from the Secretary of the Sacred Congregation of Councils, concerning the doubt regarding the Theological Prebend in *Thesaurus Rerum Solutarum*, volume 2, page 329, dated 1723, in which it

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is clearly stated that it is permissible for Canonical Theologians to read the Holy Scriptures or Theology. This is also admitted by Ferraris in *Bibliotheca Canonica*, article 9, numbers 27 and 28, where the time, place, and subject of the lectures are left to the discretion of the Ordinary. The most illustrious Lambertini, in *Institutiones*, 57, number 2, states that Innocent III decreed that a Canonical Theologian should instruct other priests and others in the Holy Scriptures, and especially in those matters pertaining to the care of souls; and furthermore, he affirms in the same place, numbers 7 and 8, that either the Holy Scriptures or Scholastic Theology can be read, and indeed that moral questions can be explained, although he considered that this should not be tolerated for particular reasons in Bologna. The speaker further argues that all of this is even more relevant in his case, since even the very nature of his discussions, which, as he himself states, are called "moral," using a common and customary term; are nevertheless also speculative and dogmatic; for the cases presented are not composed arbitrarily, nor are they treated superficially; nor do they only concern practice in the Sacred Tribunal, but rather encompass theological discussions. Furthermore, various arguments...

[*Latin ed. p. 338*]

558 Theological matters, both political and historical, are discussed, which are debated daily. Furthermore, to each case from Theology, another is added from Holy Scripture, sometimes concerning general principles, sometimes concerning certain specific difficulties.

OBSERVATIONS FROM THE OFFICE. From the office, it is observed that the sincere desire of the Church for the progress of knowledge in the Sacred Scriptures is evident from the arrangement whereby Alexander III, in the Third Lateran Council, wished to establish a benefice in every Cathedral Church for poor clerics to be instructed in the Sacred Scriptures and disciplines. Innocent III, in the Lateran Council IV, confirmed the decree of Alexander, and furthermore ordered that in every Metropolitan Church a Theologian be appointed to teach the Holy Scripture and other matters pertaining to the care of souls. Finally, the Council of Trent, with a single decree encompassing and even adding to the arrangements of this General Council, extended this provision to Collegiate churches, even those existing in a notable town. Session 5, Canon 1, concerning reform. These matters were subsequently confirmed by Benedict XIII in the Constitution *Pastoralis Officii*, and most recently by Gregory XVI in Encyclicals published in the year 1844.

It has often been debated concerning the precise function of the Canon Theologian. And, first, even in the Council of Trent itself, as testified by Cardinal Pallavicino in his *Historia* of the same Council, book 7, numbers 83 to 90, there was a controversy as to whether in monastic communities the reading of Holy Scripture, or rather, Scholastic Theology, ought to

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be taught, and it was held that the study of the Sacred Scriptures should be preferred, although not without Theology. However, several Doctors, following the decree of the Council of Trent and the subsequent Pontiffs, especially the highly praised constitutions of Benedict XIII, which speak indiscriminately of the reading of the Scriptures and of Holy Theology, have held that the Canon Theologian equally fulfills his function if he either reads the Holy Scriptures or teaches dogmatic or scholastic Theology. Fagnanus, in chapter *Quia nonnullis*, numbers 29, 30, 31, concerning Masters; Ferraris, *Tractates*, article 9, number 15, § 3; Soard, *Petra*, in commentary on Constitution Innocent VI, number 46, and Benedict XIV, in *Institutiones*, 57, number 7. And others are omitted.

[*Latin ed. p. 339*]

PREFACE TO THEOLOGICAL CHAIR 359: We heard from Pope Benedict XIV in his work, *Synod, dioceses*, book 13, chapter 9, paragraph 17, where he states: "Regarding this matter as well, we were consulted by the aforementioned Congregation of the Council; indeed, a certain discussion of ours, related in that Congregation, was even printed, which took place on June 5, 1723, and is found in *Thesaurus Rerum Locutionum*, volume 2, page 329. In it, we demonstrated that that decree of the Council of Trent, whether its words are considered or the practice and customs of subsequent times are taken into account, equally encompasses the exposition of the Holy Scriptures and the discipline of scholastic theology, and that a Canonically appointed theologian does not fulfill his office any less if he explains and clarifies the books of Holy Scripture than if he instructs the clergy in scholastic theology, provided that this theology is of the kind that Melchior Canus recommends for teaching and learning in his *Book 8 on Theological Passages*, chapter 1. Indeed, we ourselves indicated in our *Institutions*, section 42, that it should certainly concern questions of grave importance and utility, and that it should treat them with the testimonies of Holy Scripture, the decrees of councils, and the authority of the Fathers. This opinion was confirmed by the Holy Congregation in the *Fulgentius* document of July 3, 1784, ordering a Bishop to ensure that "theologians should carry out their lectures according to what was handed down by Benedict XIV concerning *Synod, dioceses*, book 13, chapter 9, paragraph 17." This had previously been answered in the same way by the Holy Congregation in Seville on April 5, 1576; for when it was asked whether someone holding a Theological Chair could fulfill his office by pursuing lectures in Scholastic Theology that he had undertaken to explain, the Holy Congregation judged that "it is fulfilled by the Decree of the Council, session 5, chapter 1, if either Holy Scripture or Scholastic Theology is read" (in the *Liber Decretorum*, volume 2, page 153). What these aforementioned authors and the resolutions of the Holy Congregation affirm concerning Scholastic Theology, many hold concerning Moral Theology.

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Thus, among others, Cardinal de Luca in his *Annals concerning the Council of Trent*, Discourse II, paragraph 5, believes that, in certain areas where heretical theology is present, Scholastic Theology should be taught, but in places where the faith of the Catholic Church is peacefully held, Moral Theology should be taught as being more useful; and Cardinal Petra, in the same place, referring to the opinion of Cardinal de Luca, and noting that the matter of prudence is left to the Bishop by the Holy Office.

[*Latin ed. p. 340*]

340 It is said that, if a theological chair were to be assigned, it could not be disapproved, since Pope Benedict XIV, in *Institutiones*, 57, n. 8, seems entirely to agree with this. There, he recounts that, in certain places, questions concerning Moral Theology are explained by a Canon Theologian, for the sake of the Holy Scriptures and Scholastic Theology, and in the Diocesan Synod, in the aforementioned place, he explains more clearly that it had been commendably ordered by some Bishops that this Theology, which concerns the guidance of consciences and morals, be taught by a Canon Theologian. This opinion is consistent with what was stated in the aforementioned doubt concerning the theological chair in the year 1723, namely that Scholastic Theology had been substituted for Moral Theology, and that this substitution began to take place concurrently with the reading of the Holy Scriptures, but that, over time, this cumulative reading ceased, and that Canon Theologians, especially in places separated from heretics, were accustomed to explain only cases of conscience. Regarding the Congregation of the Council, it can be observed that on April 16, 1595, in book 8, decrees, page 116, a response was given to the Bishop of Hvar-BraÄ-Vis: "A theological chair may be conferred upon one of the students of the Illyrian College, provided that he is, of course, suitable, even if he is to explain only cases of conscience." And in Polignano, on November 12, 1639, in book 16, decrees, page 292, "It suffices that the Canon Theologian be licensed in both laws; otherwise, he is suitable to teach Moral Theology." Also, in Badajoz, on August 24, 1765, in which the Bishop alleged that it had already been in use since the erection of the theological chair, that a Theologian should give lectures on Moral Theology or on cases of conscience, which was also subsequently expressly established by the Bishop with the Chapter, the following doubt arose: "Can a Canon Theologian be compelled, at the discretion of the Bishop, even by means of notes, to read cases of conscience or Moral Theology in place of the Holy Scriptures?" The response was "Affirmative," although, as was noted on the page by the Secretary, in the Church of Badajoz, lectures on Moral Theology were given by a Canon Penitentiary, who, according to ancient custom, did so, and who presented a separate

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Theologian for the exposition and interpretation of the Holy Scriptures.

[*Latin ed. p. 341*]

Notwithstanding these things, it must be considered whether those matters discussed by certain authors concerning the satisfaction of the duty of the Theological Prebend through lectures on moral theology are sufficiently in accordance with the Decree, Chapter 1, Session 5, on Reform, issued by the Fathers of Trent. Indeed, if one considers the rarest of cases in which it has been permitted by a special circumstance by the Holy Congregation, as many examples can be found in the Treasury of Resolutions, in which the theologian was denied the ability to fulfill his duty through lectures on moral theology. Therefore, if, according to what has been noted above, based on Benedict XIV and the authority of certain Doctors, the interpretation has been accepted that a theologian can fulfill his duty by teaching Scholastic Theology, especially since the Holy Congregation has directed the authors themselves in such matters, as has already been mentioned, and has especially approved this interpretation after Benedict XIV, it often happens that, in response to proposed doubts concerning the lectures to be given by a theologian, as in the decree of July 5, 1784, it is stated "that the lectures are to be given according to what is handed down by Benedict XIV, in Syn. Dioeces. 1, 13, c. 9, § 17." However, a great difficulty seems to remain, based on numerous decisions of the Holy Congregation, that the same should be established regarding moral theology. Indeed, the response, as has often been noted, given by certain Fathers after Benedict XIV, especially, seems to indicate that, under very special circumstances, it has sometimes been permitted for a theologian to teach moral science; and this either from a very great necessity, as in Pharen, April 6, 1595, and Polignanen, November 12, 1639, or from the immediate interpretation of the law of foundation, which had been in force for 86 years since the erection of the Prebend, as in Pacen, August 24, 1765. Furthermore, there have been Bishops who, by synodal law, ordered that a canon theologian should give lectures cumulatively on Holy Scripture and moral theology; and in Chapter 8, Title I, of the Council of Rome, published under Pope Benedict XIII, after a detailed method of giving lectures on Holy Scripture, the literal exposition of the text is especially emphasized, which is then followed by two questions derived from it.

[*Latin ed. p. 342*]

If, I; 342. Concerning Prebends: Historical, moral, or dogmatic, or disciplinary considerations, along with considerations of human learning and spiritual projects. But it seems that these [considerations] demonstrate that it is permissible for a theologian to substitute readings of moral theology for the exposition and interpretation of Holy Scripture. Having stated these things, it does not seem necessary to further elaborate on the Doctors who

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deny that a theologian fulfills his office if he reads moral theology, among whom are Gallemart, *Annotationes ad c. i, Sess. 5, Conc. Trid.*, no. 16; Ferraris, *Ad V. Canonicus*, cap. 9, no. 15; and Benedict XIV, *Institutiones*, 57, no. 8, who, although he affirms that moral theology is sometimes read in certain places, says that this should not be concealed unless in small towns. After these things have been considered in law, it is not to be overlooked that it can even be doubted whether those discussions, in which the Canon [Theologian] is said to preside, can be called questions of moral theology or even scholastic theology. For, as the same Canon A. stated, they dealt with "Christ the Democrat; the People, as it is now called, Sovereign; New Men; Tolerance; Celibacy; Ecclesiastical Goods; the Temporal Papacy; the Church and Protestantism; on freedom of conscience; on external worship, etc." All of which, although they can be examined according to theological principles, for the most part concern ecclesiastical or political public law rather than dogmatic or moral theology itself. Having considered these things that referred to a better reason by which the Canon Theologian considered himself legitimately excused from the exposition and interpretation of Holy Scripture, some observations were made regarding the office related to another title under which the Orator Theologian might believe himself to be excused from the assumed duty, under the pretext of, or defect of, an audience, or of revenues, or of the customs of those regions. And with regard to the defect of an audience, it was observed that he had not been excused from having the readings of Holy Scripture, as it appears from the S. C. C. in Fondi on October 15, 1618; for when asked, he replied that the Canon Theologian could not excuse himself.

[*Latin ed. p. 343*]

P: Inquiries concerning the dispensation from the obligation of the theological collation, based on the pretext of a lack of listeners; Ferraris, V. Canonicus, c. 9, n. 15. Therefore, especially because, as several resolutions of the same Holy Congregation have noted, Cardinal Petrucci, in his commentary on Constitution 2 of Innocent VI, number 62, indicates that, in order to intervene in the theological collation, Parish Priests, Canons, Prebendaries, and secular confessors could always be compelled. The importance of the meager income is determined by the fact that the obligation of explaining the Holy Scriptures, attached to the theological collation, is precisely assigned with certain, definite benefits, which the theologian enjoys. Finally, regarding custom, it should be noted that it directly contradicts the decrees of the Council of Trent, and therefore is to be rejected as invalid, and devoid of any effect, according to the Constitution of Pius IV, *In Principis Apostolorum*, which states, as Benedict XIV writes in *Instit. 60*, "Each and every head of that Council encompasses, and no custom of any importance, which contradicts the laws contained in those heads, is valid." With these, and other considerations noted, the following questions

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were presented: 1. And how can a theologian be considered to have fulfilled his office of theological collation through discussions, delays, and biblical interpretations in this case? 2. And how can a theological canon be excused from fulfilling the office of theological collation due to a lack of listeners, the inadequacy of income, and a custom exempting him from fulfilling this office? And to the extent that the answer is negative: 3. How should the Most Reverend Canon Theologian A. be advised regarding past omissions in this case?

RESOLUTION. The Holy Congregation of the Council, having knowledge of the matter, decided on April 18, 1863, to respond: To questions 1 and 2: negatively in all respects, and furthermore: to question 3, affirmatively, and regarding the future, the Bishop should ensure compliance with the law.

[*Latin ed. p. 344*]

544. CONSEQUENTLY, THE FOLLOWING POINTS CAN BE DEDUCED: I. A Canon of Theology fulfills his office and its purpose only when he engages in the reading and interpretation of the Sacred Scriptures; "lest," as the Council of Trent states in Session V, chapter 1, concerning the establishment of the office of Canon of Theology, "that heavenly treasure of the Sacred Books, which the Holy Spirit has bestowed upon men with such generosity, should lie neglected." II. Therefore, the Theologian A. did not fully fulfill his office through the discussions he led; for although those questions can be examined according to theological principles, they are more closely related to public or political law than to Dogmatic or Moral Theology. III. Nor is a Canon of Theology ever excused from the reading and interpretation of the Sacred Scriptures, either due to a lack of audience, or due to the poverty of his income, or due to any custom of a particular place to the contrary. IV. Nevertheless, there are some resolutions of the Holy Congregation, and many authors, who maintain that a Canon of Theology fulfills his office both when he reads and interprets the Sacred Scripture, and when he discusses Scholastic Theology, provided that this concerns questions of great importance and of great utility. V. Moreover, there have been some Bishops who, by order of the Synodal law, have commanded that a Canon of Theology sometimes give lectures on the Sacred Scriptures and Moral Theology, especially in small towns.

[*Latin ed. p. 345*]

The patronage was established on July 30, 1872. Summary of the facts. The Canon died on February 3, 1749; and because, while he lived, he had practiced piety, as a testament to this virtue, he established a simple endowment, and endowed it with certain rural and urban properties, which together would yield to the Rector approximately fifty scudi, with the obligation of one Mass being celebrated each week. He distinguished the pa-

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tronage into an active and a passive component, granting the first to the Archpriest, for the time being, of the Collegiate Church, in which he had been a Canon. Secondly, he granted it to the male descendants of his sister M; and, in the absence of these, he designated as successors in the passive patronage the sons born of another sister, C. However, he excluded B, one of the sons of the first sister, and all of his descendants, both in the male line and in the female line, from this benefit. He gave to the Archpriest a rule to be observed perpetually; namely, that he should alternately nominate one from the family M and one from the family C. The Archpriest followed this procedure until these times, and one descended from the sister C held the benefit until August 21, 1871, on which day he died. Upon this death, since the benefit was vacant, the aforementioned Archpriest was immediately approached by the Presbyter B and the cleric E, in order to obtain the nomination. The origin of this matter stems from the fact that B was excluded forever from the passive benefit, while the other descended from the sister C through a female. Of these two applicants, the Archpriest nominated the cleric E, under the condition of obtaining a dispensation regarding his lack of age, and presented him to the Curia on November 8, 1871. Having obtained the nomination, he immediately offered prayers to the Most Holy Prince, so that he would deign to grant him a dispensation regarding his lack of age. The Ordinary of the cleric E was consulted to report.

[*Latin ed. p. 346*]

346. Concerning the case, regarding the age, morals, studies, and the legitimate petition of the petitioner, he responded: "The cleric E was born on February 3, 1860, was baptized, and confirmed, and is endowed with good morals," and we commend him to the clemency of the Most Holy Prince, so that he may implore grace from him. He asserted that there was no other reason for granting the dispensation, except for the blood relationship with those passively called to the priesthood, and for family hardships, increased by the death of his father. The presbyter B strongly opposed this dispensation; therefore, the Sacred Congregation ordered that the Ordinary be informed that the case should be discussed in a full assembly, and that he should present his rights as he wished. The discussion proceeded. THOSE WHO SUPPORT THE CLERIC E. The patron of this cleric maintained that the dispensation should be granted to him for two reasons: 1. because he enjoys the right of patronage passively; 2. because the other line, from which the opponent descends, is excluded from the current vacancy. Regarding the first point, the opinion of Geminianus does not stand in the way, which holds that, if there is a complete lack of a family or lineage to which the patronage was left, the patronage is extinguished, and the church reverts to the free collation of the Bishop; since Ancharanus and the Doctors generally held that the patronage then passes to the heirs, both by will and by intestacy, of the last of the family or lineage of the

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deceased, and therefore the right of patronage becomes hereditary. And Pitonius, referring to the theory of Ancharanus, states in his Disputation 33, n. 1: "The celebrated and accepted theory of Ancharanus, which, with better fortune, prevailed over the contrary opinion of Geminianus, teaches that the right of patronage of a noble family becomes hereditary in the last of the family and passes to his heirs, even if they are strangers: because, since, according to common law, the right of patronage passes to foreign heirs, therefore the provision of the founder, or the one who calls and provides for the descendants of the male line of the family, does not abolish the provision of the law, or of common law, which confers the right of patronage to foreign heirs, since that expression of the founder, with regard to the same descendants, does not invalidate other successors who rely on the law."

[*Latin ed. p. 347*]

JURISDICTIONATUS 347 > communi, sed censeatur facta mentio de illis potius ex "abundantia], seu quia voluit eis pinguius providere, ut ius patronatus transiret ad eos etiam non haeredes. Si id in iure certum evadit ex Ancharani sententia, in facto aeque certum fuisse, aiebat, B exclusum a Fundatore, successisse, ministerio legis, ultimo ex Filiis M; in totam haereditatem. Ast Clericum E descendere a B per medium Foeminae demonstratum fuisse ex arbore genealogica. Ergo aeque certum evadere clericum E frui debere iuspatronatus passivo, utpote haeredem totius axis patrimonialis, quo etiam dos dicti Beneficii continebatur. Neque obesse contendit B exclusum fuisse; quandoquidem ipsum clericum non venire qua descendenti a B, sed qua haeredem ultimi ex familia M: quo in casu provisionem legis cessare facere provisionem hominis. Inutiliter autem opponi posse ex theorica Ancharani derivare absurdum; nempe iuspatronatus in una linea esse haereditarium, in altera vero gentilitium. Eiusmodi doctrinam haud implicare, satis erudite tradere Pitonium Disceptatione 33 n. 2 « quae theorica procedit etiamsi iuspatronatus per» tineat ad duas lineas, seu duas Familias, nam una defecta » non transit ad aliam sed ad haeredes ultimi de illa, quae » defecit, cum non implicet iuspatronatus pro parte esse gen-, » tilitium et pro parte haereditarium, seu eius exercitium » penes unam lineam esse uno modo, ac altero penes alte» ram, firma remanente individua substantia proprietatis. Et relative ad secundum caput, quod nempe altera linea in vacatione hac excludebatur, patronus aiebat, Fundatorem voluisse Archipresbyterum nominare debere vicissim, nunc e familia M, nunc e familia C. Sed postremum in possessione Beneficii fuisse unum de familia C; hinc indubium esse in hac vacatione unum ex familia M Beneficium consequi debere. In praesenti Clericum E esse unicum in linea ista certo constare; proptereaque ei beneficium conferendum esse, indulta aetatis dispensatione. Accedit insuper Presbyterum B consequi nequire Beneficium; tum quia suam descendenti am non probat, tum quia opiniones praeiudi-

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catas fovet tam in re po-

Jurisdictional Matter 347 > in common, but it is considered that mention was made of them rather from "abundance," or because he wished to provide them with greater benefits, so that the right of patronage would pass to them even if they were not heirs. If this is certain in law according to the opinion of Ancharani, in fact it was equally certain, he said, that B was excluded by the Founder, and that the law, in the last resort, passed to the sons of M, to the entire inheritance. But it has been demonstrated from the genealogical tree that Clericus E descends from B through a female. Therefore, it is equally certain that Clericus E should enjoy the passive right of patronage, as the heir to the entire patrimonial axis, which also included the endowment of said Benefice. It was not argued that B was excluded; since Clericus E does not come as a descendant of B, but as an heir of the last of the family M; in which case, the provision of the law ceases to apply, and the provision of men takes effect. However, it is useless to oppose this by deriving an absurdity from Ancharani's theoretical position; namely, that the right of patronage is hereditary in one line, and gentile in the other. Such a doctrine is not implied, as Pitonium states with sufficient erudition in Disputation 33, n. 2, "this theory holds even if the right of patronage extends to two lines, or two families, for if one is lacking, it does not pass to the other, but to the heirs of the last of that which is lacking, since it does not imply that the right of patronage is partly gentile and partly hereditary, or that its exercise is in one line in one way, and in the other in another way, the individual substance of property remaining the same." And with respect to the second point, namely that the other line was excluded in this vacancy, the patron argued that the Founder wished to appoint an Archpriest alternately, now from the family M, now from the family C. But finally, one from the family C was in possession of the Benefice; hence, it is certain that in this vacancy, one from the family M should receive the Benefice. At present, it is certain that Clericus E is the only one in this line; therefore, the Benefice should be conferred upon him, with a dispensation from the law of age. Furthermore, Presbyter B cannot receive the Benefice; both because he does not prove his descent, and because he fosters preconceived opinions, both in matters of property and...

[*Latin ed. p. 348*]

348. Whether this pertains more to political matters than to dogmatic ones. Therefore, in the absence of a legitimate heir, it was concluded that grace should be granted to him. THOSE THINGS WHICH ARE FAVORABLE TO THE REVEREND B. On the other hand, the Reverend B. vehemently objected, stating that the question of the testator's will could not be admitted, since there is no ambiguity in the words. Therefore, all doubt should cease, since the founder clearly prescribed the persons who

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should succeed in the patronage and guardianship, or in the family. Indeed, in our case, the founder, using not doubtful but clear and explicit words, excluded Cleric E from obtaining the benefice, as one who descended from a family that was displeasing to him and who was, from the beginning, excluded from the right of passive patronage, along with all his descendants. It would not be beneficial for Cleric E to request admission to the possession of the benefice, not as one descending from B, but as his heir. For, even if this were the case, the supreme will of the testator would be most clearly violated, which both laws proclaim should be sacredly and religiously observed; it should be noted that 1. The hereditary quality of Cleric E has not been legitimately proven; 2. Cleric E requested the benefice only in virtue of Ancharan's theory. All teach that there is no place for such a theory in our case, and that the limitation should be understood according to the theory of Geminiani, to which it must yield in the case where the founder, using explicit words, reserves the patronage to a certain family and lineage. With this established, he continued: In what way, and by what right, can the right of patronage be transmitted to those descending from B who have been expressly excluded by the founder? Therefore, in this matter, it is verified that the provision of a person gives way to the provision of the law. With these and other considerations, the purpose was to demonstrate whether the petition of Cleric E should be accepted in this case. RESOLUTION. The Congregation of the Holy Council, having knowledge of the case, decided to respond:

[*Latin ed. p. 349*]

Regarding the presentation of the case and the number of times it should be presented, it freely pertains to the Archpriest, as it concerns the family M. The presentation and petition (of Cifrici) E. are not upheld. THEREFORE, IT IS UNDERSTOOD: I. The Sacred Congregation did not admit the theory of Ancharani; which teaches that the right of patronage of benefices passes to heirs, both by testament and by intestacy, from the last of the family or lineage, and therefore becomes hereditary. II. Nor could common law have hindered in our matter the will of the testator, and therefore the provision of the man superseded the provision of the law. For III. It is certain that the will of the testator must be observed piously and religiously, to the extent that it admits or excludes certain persons from succession to the patronage. IV. The law of Canon Law does not allow for the interpretation of opinions or theories, or for the presumption of the law, when a clear and expressed will of the testator is established. See Horn. VIII, fose. XÜ.

[*Latin ed. p. 350*]

550. CONCERNING THE ESTABLISHMENT OF A CANONICAL OFFICE FOR THE PENITENT, dated April 24, 1864. In the esteemed Cathedral B, besides the Theological Canonry, which had been recently

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founded and possessed nine canonries; of which the canonries had, from the most ancient times, been subject to the right of option. Therefore, in such a Church, the office of the Penitentiary was lacking; and since it was not attached to any canonry, it was customarily exercised provisionally; and for almost twenty years, it had been deeply desired within the same Chapter. To address this inconvenience to the Bishop, concerning the state of his Church, which he presented in the year 1858, the Most Holy Congregation was informed of the lack of a Penitential Canonry (which, however, was said to have existed formerly), and subsequently, the Sacred Congregation of Councils notified the Chapter, in which the aforementioned Bishop was urged not to cease investigating a means, according to the laws, to restore the Penitential Canonry. However, the Chapter responded on May 29, 1859, that it could not restore the canonry, which had never existed; and it added that it would not at all object to the institution of a Penitentiary, which could be carried out without detriment to the ancient right of option. Nevertheless, if it were necessary to assign a specific canonry to that office permanently, it was deemed possible to do so conveniently, perhaps upon the canonry called G. V., over which there had arisen a favorable outcome regarding some of its goods. The Ordinary then waited, expecting the desired outcome of the dispute; but when, on December 29, 1861, the canonry called S. became vacant, he informed the Chapter that it should be erected into a Penitential Canonry. But the Chapter, on January 16, 1862, unanimously rejected this proposal for the following reasons: 1. Because all of its canonries, except for the Theological one, were merely canonical and subject to option. 2. Because the possibility of option for the canonries did not prevent the appointment of a Canon.

[*Latin ed. p. 351*]

ERECTIONIS PRAKDKND.VE POTENTIALIS %') f Poenitentiarius iuxta Concilii Tridentini praescriptum. 3. Quia Capitulum noceret Canonico Poenitentiario potius quam iuvare t, dum illum privaret optionis iure. Rursus Ordinarius S. C. Congregationem adiit expostulans quonam modo sibi liceret tandem proprium officium adimplere, et Capitularium obstacula superare. Per litteras S. C. die 18 Augusti 1862 certior efficiebatur Episcopus de facultate, qua pollebat perpetue erigendi ex tunc in Poenitentiariam aliquam in genere praebendam licet optabilem, pro tempore quo primum vacatura esset; quas litteras Capitulo patefecit. Cum tamen Capitulum magis magisque obsisteret, quominus per poenitentiariae erectionem sibi ius optandi in aliqua praebenda praecideretur, iudicio tandem S. C. C. Episcopus rem dirimendam detulit. Disceptatio syuopttea. Ordinarius Litteras mittebat ad S C. Congregationem sub die 3. Ianuarii anni 1863 adprecans ut in maiori animarum bono quaestio quamprimum absolveretur, quae inter illum et Canonicos exorta erat. Interdum tamen ut suam protueretur sententiam

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ante oculos ponebat EE. Cardinalium maximam confessariorum penuriam, qua afflictabatur civitas, Caput suae Dioecesis inquiens: ita paucos numero esse Confessarios ut fideles saepenumero incassum quaererent qui confessionem suam exciperent. Proindeque statim opus esse idoneo probatoque Poenitentiario, qui pene a viginti annis abest in Capitulo, maximo animarum detrimento; dum facillime obtineri posset. Nam prosequebatur Episcopus, novem extant in eiusmodi Capitulo Praebendae Canonicales penitus liberae; ita ut cuique illarum indifferens esset an ex illis una pinguior Poenitentiario destinaretur ; qui pro certo sciret, sibi inesse strictam excipiendi confessiones obligationem. Quamvis Capitulum haud facile fieri id posse existimet, mihi ex adverso planum videtur, ait Episcopus, posse opus confici si provisorio destinaretur Poenitentiario vacans praebenda M. ut postea modo definitivo constituatur ei praebenda C. statim ac vacavisset. Capitulum e contrario, cui ab Episcopo praefigebatur.

THE ERECTION OF A BENEFICE, POTENTIAL. %') A Penitentiary, according to the prescription of the Council of Trent. 3. Because the Chapter would harm the Canonically appointed Penitentiary rather than help it, depriving it of its rightful option. Again, the Ordinary addressed the S. C. Congregation, inquiring how he might fulfill his own office and overcome the obstacles presented by the Chapter. By letters of the S. C. dated August 18, 1862, the Bishop was informed of the power he possessed to perpetually erect, from that time forward, a Penitentiary benefice to be offered in general, although it might be subject to option, for the time that the first vacancy occurred; these letters he showed to the Chapter. However, since the Chapter continued to resist, preventing the erection of the Penitentiary from preceding the right of option in any benefice offered, the Bishop finally submitted the matter to the judgment of the S. C. Congregation. Disputation ensued. The Ordinary sent letters to the S. C. Congregation on January 3rd of the year 1863, imploring that the question, which had arisen between him and the Canons, be resolved as soon as possible for the greater good of souls. At times, to support his own opinion, he brought to the attention of the Most Eminent Cardinals the great lack of confessors with which the city was afflicted, the head of his Diocese saying: "There are so few confessors that the faithful often seek in vain for someone to hear their confessions." Therefore, it is immediately necessary to have a suitable and approved Penitentiary, who has been absent from the Chapter for almost twenty years, to the great detriment of souls; and this could easily be obtained. For, the Bishop continued, there are nine Canonicals in that Chapter completely free; so that it would be indifferent to each of them whether one of them was assigned to a more lucrative Penitentiary benefice; knowing for certain that they have the strict obligation to hear confessions. Although the Chapter does not easily believe that this is possible, to me, on the contrary, it seems possible, said the Bishop, to accomplish this work if a

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Penitentiary benefice, currently vacant, were provisionally assigned to M., so that later, as soon as it became vacant, it could be definitively established as a benefice C. The Chapter, on the contrary, to which the Bishop had prefaced.

[*Latin ed. p. 352*]

"The term for the cessation of the erection [of a canonry] to transfer its rights to the Holy Office produced the following consequences. He stated that he had not in any way obstructed the Ordinary from establishing a canonry according to the prescription of the Holy Canons; however, he did not consider it necessary to permanently grant him [a prebend], which had been constantly desired before and after the Council of Trent, so that no one, and the canon himself, could desire to offer or receive a richer [prebend]. He had, however, opposed the innovation that the Bishop wished to introduce, based on the following considerations. 1. He did not believe that the Fathers of the Council of Trent, either by chance or without purpose, in Session 24, chapter 8, concerning reforms, had introduced the limitation twice expressed in the words "where it can conveniently be done," regarding the institution of a canonical canonry; but rather that they intended to indicate that in such an institution, the rights that were not contrary to the prescriptions of the canons should not be violated. Therefore, it must be clear that if the Council of Trent decided that a canon with a prebend should be established, it did not intend to violate the rights established by the Chapters (such as the right of option, as in this case), nor to hinder the canon from transferring to a richer prebend by virtue of the same right of option. Based on these considerations, the Chapter considered that it could not, and should not, approve, to the detriment of the present and future, nor of the canon himself, that one of the prebends be removed from legitimate option and permanently added to the canon. 2. There existed in the Chapter ten canonical prebends, of which one was theological (not subject to option) by a more recent institution, and nine were subject to option by the oldest foundation; of which the privilege had received sanction through the capitular constitutions in the year 1385; which remained intact after the Council of Trent; and which the Holy Congregation [Sacra Congregatio] left intact."

[*Latin ed. p. 353*]

PREFACE: On January 28, 1860, a petition was presented; against the objections of the Ordinary of that place, who wished to deny the right of option concerning a certain benefice, so that he might appoint a Dean for the time being. 3. All the Ordinaries of that Diocese, of whom many are most noble and most diligent in the observance of the Holy Canons, have never, in any way, violated the canonical right of option, so that they might appoint Penitentiaries, believing, without doubt, that the Council

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of Trent intended to establish Penitentiaries with endowed benefices, and not endowed benefices of canons. Having explained the reasons by which the Ordinary and the Canons were acting, the following matters remain to be considered, which must be observed according to duty. The law of the Fathers of Trent concerning the erection of a canonical benefice is manifest; and it is stated in these words in Session 24, Chapter 8, concerning Reforms: "In all cathedral churches, where it can be conveniently done, let a Penitentiary be instituted by the Bishop, together with the benefice that is about to become vacant." These words of the decree of the Council of Trent, while demanding the institution of Penitentiaries in all cathedrals, do not make any exception with regard to the quality and nature of benefices. It is far more the case that these words of the decree, "where it can be conveniently done," should be understood in such a way as to restrict, to some extent, the privileged right of option, so that the faculty of the Bishops to erect a benefice that is about to become vacant into a Penitentiary is not, as some commonly teach, hindered from being done by the right of option. Garcías, in *De Beneficiis*, part 5, chapter 4, number 129, states: "The assignment and appointment of a benefice for a Penitentiary by means of option would not be hindered after it has been erected in churches where the right of option is in force, although it might rightly be considered that it could be chosen as a Penitentiary before the erection; but, if the Bishop erects it before the option, the erection prevails, even if it were afterwards chosen."

[*Latin ed. p. 354*]

534. ERECTIONIS. Cardinal Petra, in Constitutione 2 Innocentii V, n. 24. (1) "Indeed, many questions arise concerning the dispensation [of benefices], when, in churches, the right of choosing between capitulars prevails, either by privilege, custom, or statute. And first, it would be difficult to see how the decree of the Council could be put into practice in those same churches, since, in the dispensation of the first vacancy, the older canon has the right; nay, indeed, it is not even considered to be vacant, since it is said to be preempted by the right of option; unless it could be clarified by the resolutions of the Holy Congregation, namely: either the dispensation of the first vacancy is formally erected into a theological office before the vacancy, and then it cannot be chosen; or the dispensation of the first vacancy was not, in itself, erected into a theological office, and is indeed subject to options (2)."

"If, indeed, the resolution of the Holy Congregation can be interpreted well, in which it declared that, in the dispensation of the first vacancy, the right of option does not have place, as Garzia points out; then the objection previously mentioned, that the older canon has the right in the vacant dispensation, ceases in this case; since the right of choosing only has place in the free dispensation of the benefice, and not when it is affected, as, for example, for a theologian. Therefore, from Garzia and from Cardinal Petra,

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the question is easily resolved with this distinction: whether the formal erection of the dispensation as a theological or penitential office preceded the vacancy, or not. In the first case, the erection prevails, and every way is closed to the option; in the other case, the option prevails concerning the..."

(1) "In order that the doctrine of Cardinal Petra may be rightly understood, it must be noted that the penitential and the theologian are to be provided for in all cathedrals in which they have not yet been instituted, with due honor and support, by law (1). Although the Council of Trent almost equates the penitential office with the theological office, nevertheless, after Benedict XIII had given more information concerning the theological office, and had concluded with the erection of the dispensation, he finally decreed that, whatever has been said concerning the theological office, and whatever we have decreed, we also want and command to be observed, even and especially, concerning the erection of the penitential office; so that, if the dispensation is formally erected into a penitential office, the canon is to be appointed to that office by the Ordinary, as we have sanctioned from Holy Scripture."

[*Latin ed. p. 355*]

"Concerning the endowments of Penitentiaries: 355 'It is understood that the endowment is not yet assigned, and that the last one, after the option has been completed, is assigned to the Penitentiary. However, from the preceding distinction, it cannot be denied that, if the assignment is not perfected before the vacancy, the condition of the Penitentiary would be worsened. Indeed, the endowment abandoned by the last candidate would be the smallest of all; and it would probably be so meager that it would not be considered sufficient for the office of the Penitentiary. Therefore, the office of the Penitentiary, which is among the most important and serious, would be perpetually attached to a worse endowment, which certainly seems inappropriate. Berardius, p. 240, addresses this inconvenience with these words: 'The Council of Trent expressly states that the endowment should be assigned to the Penitentiary when it is next vacant.' This union, however, seems to be permanent. But, on the contrary, it may be argued that the Fathers of Trent intended to grant this union 'by grace' to the Penitentiary, so that he might not remain for a long time without an endowment, and therefore it is permissible for the Penitentiary to also choose, whenever the first vacancy appears to be very meager, lest it be wrongly said that the grace of Trent is being used to the detriment of the Penitentiary. In this doubt, I believe that the Bishop would act prudently, whenever, in the erection of the Penitentiary, he assigns to the Penitentiary the endowment that is next vacant, reserving the grace of the Penitentiary, so that he may be able to choose a better one, whenever another becomes vacant, until finally, the one chosen last remains as the permanent endowment of the Penitentiary, no longer subject to the vicissitudes of any further option.

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However, such a reservation of the option does not seem to be within the power of the Bishops. Indeed, the Penitentiary cannot regularly choose: Barbos, *De Canon. et Dignit.*, cap. 26, n. 23; Garzias, *De Benef.*, part. 5, cap. 4, n. 132 et seq. Therefore, it seems more correct that Cardinal Petrucci, in the aforementioned passage, n. 25, stated that the benevolence of the Holy Congregation, by a special commission from the Supreme Pontiff, usually grants the Penitentiary the faculty to choose a better endowment, when the last endowment assigned to him is too meager. Indeed, in one *Sebenica*, in the year 1651, it was resolved that neither the Theologus nor the Penitentiary should be admitted to the right of choosing; but when the Bishop, visiting the Holy Thresholds, explained that..."

[*Latin ed. p. 356*]

356. The Sacred Congregation of Penitentiaries, in a rescript dated May 8, 1688, addressed to those engaged in the theological and penitential duties, stated: "Furthermore, in order to provide for the needs of those who labor in the Penitential and Theological duties, the Holy Congregation, with the authority specially attributed to it, has graciously granted that the Penitentiary and Theologian of the Cathedral of Sebenico may choose a benefice, just as other Canons do, until they attain to a more substantial benefice, which they shall understand and know to be permanently assigned to the Penitentiary and Theologian for the time being." And finally, in Melevitana, on February 23, 1726, in response to the question, "Can a Canon, having relinquished his benefice, choose another which remains permanently attached to the office of Penitentiary?" the answer was, "By the grace of God." Whether the union of a benefice with the office of Penitentiary can be merely accidental and personal, or rather, must be real and permanent, seems to be defined by the very words of the Council of Trent. For, by common and ordinary understanding concerning the matter of benefices, a perpetual and regular bond is established between the office and the benefice. Especially when the office of Penitentiary requires the special industry and ability of a particular person, which also necessitates a suitable benefice. And since it is easily permitted for a Theologian to be appointed to the office of Penitentiary, as Cardinal Petra states in the aforementioned passage, number 20, it is undoubtedly true that a Theological benefice is permanently united and inseparable from the office to which it was once and for all assigned; thus, the Fathers consider the division of the Theological benefice from the office of Theologian to be absurd. The aforementioned words of the Council indicate that a benefice should be united with the office of Penitentiary. Therefore, in response to the question of whether certain benefices could be assigned to a Theologian, the Holy Congregation in Cephaluden, on January 15, 1593, in book 7, decree, page 86, answered in the negative; although Cardinal Petra, in the aforementioned passage, states that the Theological benefice can be supplemented by the fruits of

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simple benefices. Finally, among the various benefices of a certain chapter, it is the benefice that is determined not by what is most desired, but by the uncertain future event of a vacancy, that should be assigned to the Penitentiary. For, above all...

[*Latin ed. p. 357*]

Among the matters that concerned the Fathers of Trent, was the establishment of a distinguished office. They desired that such an office be instituted as soon as possible in the Cathedrals, although this might, indeed, occur too late, if some special provision were to be designated. Therefore, the Fathers of Trent decreed that, rather than any provision whatsoever, the office should be assigned to the first vacancy that occurred. Indeed, the Most Reverend Cardinal Petra, in the aforementioned work, number 16, reports that, when there was doubt as to whether a Bishop might assign a vacant benefice to a Penitentiary rather than to a Theologian, the Holy Congregation responded: "This is not within the Bishop's discretion," and that the benefice should be assigned to a Theologian, by reason of the words of the Council itself, and therefore, if it should seem more expedient in any place to provide for the Penitentiary first, Apostolic confirmation must be obtained. From this, the same Cardinal Petra established as a general rule that it is not proper for a Bishop to delay the establishment of such an office, by converting a vacant benefice to another purpose. Following these and other matters noted above, the following questions were proposed for resolution: "Whether and how there is a place for the erection of a Penitentiary office in this case? And, negatively, whether and which benefice may be determined by the Bishop for the Penitentiary office in this case?"

RESOLUTION. The Holy Congregation of the Council, having considered the matter, responded on April 23, 1864, as follows: To the first question, affirmatively. To the second question, affirmatively, according to the judgment of the Bishop, provided that he acts in accordance with the Holy See.

THEREFORE, IT IS UNDERSTOOD: It is undoubtedly within the power of the Ordinary perpetually to erect in his Cathedral, from among its benefices, a Penitentiary office, so that a Penitentiary, instituted by the Bishop, may be joined with a benefice that is immediately vacant.

[*Latin ed. p. 358*]

558. Regarding the appointment to a benefice for the purpose of providing a livelihood, no words of the Council of Trent should be interpreted as creating an exception based on the quality or nature of the benefice; thus, as soon as the Bishop designates one of them for the purpose of providing a livelihood, the right to choose it loses all force, and the appointment takes precedence.

III. A benefice designated for the purpose of providing a livelihood, be-

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fore a vacancy occurs in a formally established parish, should be considered as reserved and designated for that purpose; and no older right derived from Canon Law should prevail over it; while it is permissible to choose a benefice freely, it is by no means considered reserved or designated.

IV. It should not be considered that a benefice becomes, by the very fact of a vacancy, and by law, designated for the purpose of providing a livelihood; but rather, it is entirely necessary that the Ordinary formally designate it for such a purpose.

V. It is not possible for the condition of a parish to become worse than all other parishes according to Canon Law, when the formal designation for the purpose of providing a livelihood precedes the vacancy; because the benefice abandoned by the last candidate is usually the least desirable among all others; and therefore, it is insufficient for the office of a parish, which should be considered among the more distinguished and important ones.

VI. Although, by common understanding, a permanent bond is usually established between a benefice and the office to which it is attached; nevertheless, if that benefice is meager and insufficient, it has happened that, for the sake of the Apostolic See, a parish has been granted the right to choose benefices, until it could attain one of the more substantial ones.

VII. In our case, the union of a benefice with the office of a parish was, for the sake of the Apostolic See, initially provisional; so that the institution of the parish would not be unduly delayed, or so that the individual would not remain for a long time without a benefice; and it became permanent when the parish priest obtained a more substantial benefice designated by the Ordinary.

VIII. Finally, it is not permissible, by law, for the Ordinary to establish, in place of a benefice, certain simple endowments for a parish priest; although, according to the Doctors, it is permissible to supplement the insufficiency of such a benefice through the fruits of those endowments.

[*Latin ed. p. 359*]

5.) DECLARATIONS CONCERNING CERTAIN MATTERS RELATING TO THE JUBILEE, ISSUED BY THE APOSTOLIC PENITENTIARY.

I. Can confessors absolve a penitent who has already been absolved from reserved matters and censures, but who again falls into such matters before having fulfilled the works prescribed for obtaining the Jubilee?

R. It is possible to be absolved from reserved matters and censures only once during the Jubilee; therefore, the answer is negative.

II. A certain Ordinary stated that in his diocese there are some rural and mountainous parishes; in which the chapels and churches are indeed smaller; but which are so far apart, or are located on the summits of such

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mountains, that a notable part of the flock is prevented from participating in the prescribed visitations due to the difficulty, and therefore does not obtain the Jubilee indulgence. Therefore, he requests permission to designate either only the parish church, or the parish church and that chapel only, which the people can conveniently access, omitting the others which are more difficult and inaccessible.

R. Only those chapels which are dedicated to public divine worship should be designated; in which Mass is customarily celebrated, and whose visitation is not morally impossible according to the judgment of the Ordinary. Provision should be made for those faithful who, due to some particular impediment, are unable to visit these chapels, through Apostolic Letters.

III. A Reverend Father General of a certain distinguished Order inquired whether, with regard to the choice of confessor, he must be approved by the Ordinary of the place, or by the Ordinary of the Order?

(1) Alice related such a matter on page 226 of this volume.

[*Latin ed. p. 360*]

3C0 CONCERNING DOUBTS. Regular clergy, according to the Apostolic Letters *Gravibus Ecclesiae*, for the sake of celebrating the Jubilee, can choose any confessor, provided that he has been approved by the Local Ordinary to hear the confessions of laypersons.

IV. A.n. He who has not fulfilled the Paschal precept before the Octave after Easter, or before the term of the dispensation granted by the Ordinary, may, after some time, obtain the benefits of the Jubilee with a single confession and a single Communion; or he must perform two distinct confessions and two distinct Communions; one to fulfill the Paschal precept of that year, and the other to obtain the benefits of the Jubilee?

R. To obtain the benefits of the Jubilee, a confession and a Communion are required, both entirely distinct from the annual confession and the Paschal Communion.

V. Should the faculty of absolving him who has absolved a complicit person, or falsely accused the confessor, be granted or not be granted in the Jubilee of the Vatican Council, out of concern?

R. Provision is made by the Letters of the Holy Penitentiary of January 25, 1875 (1); that is, that no faculty is granted to absolve from the sins expressly mentioned in the Constitution *Sacramenta Poenitentiae* of Benedict XIV.

VI. Are the faithful, who, according to the disposition of the Ordinary, only perform five processions in a row to the churches, obliged to recite the prayers prescribed by the Roman Pontiff for the other ten processions remitted by the Ordinary?

R. The terms of the remission granted by the Bishop, according to the force of the Apostolic Letters, must be observed (2).

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VII. From the responses of the Holy Penitentiary, it is clear that it is not (1) These were cited on page 266 of this volume. (2) The reason for such a resolution seems to be this: Now, while it may be permissible to doubt whether the Ordinary, when dispensing with the processions to be performed, can also dispense with the prayers; yet, it is not ambiguous that the aforementioned prayers are so connected with the processions that they constitute an essential part of them. Therefore, if the processions are remitted, the prayers are also understood to be remitted; unless, however, the Bishop, when remitting the processions, orders that the prayers be supplied.

[*Latin ed. p. 361*]

(DUBIUM 361) Whether it is possible to fulfill the Paschal precept and gain the benefits of the Jubilee with a single confession and a single Communion; and whether one or the other can be attained with two Communions and a single confession? R. Affirmative; however, the obligation of fulfilling the annual confession remains, if anyone has not yet fulfilled it (1). VIII. The Ordinary N. inquired of the Holy Penitentiary Tribunal whether, by virtue of this Jubilee, those who have rebelled against the civil government of the Holy See can be absolved. R. Affirmative, under the conditions expressed in the documents issued by the Holy Penitentiary on June 1, 1869, under number 1. (I) Every faithful person is obligated to make one confession within the year; not necessarily within the Paschal season, as decreed by the Lateran Council. Canon 21 prescribes it once a year. Thus, if someone has already fulfilled the annual precept before that time, or if they have a pious custom of confessing more frequently during the year for their own devotion, they do not need to make two confessions during the Paschal season to fulfill the precept and gain the benefits of the Jubilee, but a single confession with two Communions will suffice.

FROM THE LETTER OF THE HOLY CONGREGATION OF THE HOLY ROMAN CHURCH, INQUISITION, TO THE MOST REVEREND BISHOP OF PREMYŚL, LATINS, IN GAUL.

Most Reverend Lord, as Your Excellency, through the supplicating letter presented by the Apostolic Nuncio of Vienna to Our Most Holy Father Pope Pius IX, explains the extent of devotion to the Blessed Virgin, Mother of the Incarnate Word, in the diocese of Przemyśl, as well as throughout Poland, and how pious sodalities in her honor have frequently been approved, and among the most recently established is that called "Notre Dame du Sacré Cœur," which has received indulgences from the Apostolic See.

[*Latin ed. p. 362*]

362 The letters are filled with the favors bestowed upon him, and many associates are counted among them. He also added that he had received with great joy the soon-to-be-made version in French of the invocation,

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which, being most suitable to the genius of the Polish language, sounds the same as "Mater Cordis Iesu," noting that it best corrects certain erroneous and dangerous versions in that language which would correspond to the invocation "Regina Cordis Iesu." With these premises, he requests the same Eminence to grant that the genuine and pious version, or invocation, in the Polish language, as expressed above, may be applied to the French invocation "Notre Dame du Sacré Cœur," which has already been granted and will be granted in the future. Furthermore, the Most Reverend Fathers Cardinals, together with the General Inquisitors, to whom the knowledge of this matter has been entrusted by the Most Holy Lord, could not but recognize and praise the zeal and dedication of the aforementioned Eminence in defending the purity of the faith, which, especially in these days, seems to be carelessly neglected by certain men, who, although pious, are perhaps too enamored of novelty, failing to consider the danger that diverse and foreign doctrines may easily lead the minds of even the most faithful away from the true sense of piety and devotion. To this end, as has already occurred, this Holy Congregation, with the authority of the Pope, considered it necessary to reprehend and admonish those who were striving to explain the title of the aforementioned association and to illustrate its meaning, as their preaching, which extolled the blessed Virgin Mary's title derived from her divine motherhood, did not fully adhere to the tradition of the Church and the true Catholic sense, and they magnified this new title as if a new height and glory had hitherto been unknown to the Virgin, and as if something were lacking in her sublime dignity, as it has been held up to now according to the teaching of the Holy Fathers; failing to consider that, although she holds great power with the Son, it cannot be piously asserted that she exercises dominion over Him. Indeed, the Apostolic See considered the title "Notre Dame du Sacré Cœur" to be not to be disapproved of, since the faithful of Christ invoke her with this formula as their Lady. Also relevant is the decree already issued, in which it is stipulated that titles translated into Polish words must be approved.

[*Latin ed. p. 363*]

LETTER 365, which signified the Queen of the Heart of Jesus, it was prescribed that the French invocation, "Notre Dame du Sacré Cœur," should be maintained, in whatever language. Furthermore, the subsequent order of the Pontiff was that the statues or paintings to be dedicated to worship should represent the Virgin holding the Infant Jesus, not at her knees, but at her arm. This, indeed, has indicated that the Apostolic See is diligent, not only in condemning and proscribing errors which openly oppose Catholic truths, but also in rejecting opinions and sentiments which, concerning this and other matters of this kind, may seem to obscure or slightly compromise the purity of doctrine. Furthermore, concerning the object of your petition, know that nothing prevents the sodality from being established here and

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participating in the same treasury of indulgences, which was principally endowed by Issodoun, provided that the meaning of the title or invocation, translated into the Polish language, faithfully corresponds to the meaning of the French title: "Notre Dame du Sacré Cœur." This, fully approved by the mind of the most excellent Order, I gladly prescribe to Your Eminence. As for myself, I wish to express to you the sentiments of my heart, and I pray that all may go well and happily for you from the Lord. To Your Eminence, in Rome, on the 28th of February, 1875.

Most devotedly, to the Bishop of Przemyśl, as a brother,

C. CARD. PATRIZI.

[*Latin ed. p. 364*]

564 FROM THE HOLY CONGREGATION FOR RITES. DECREE. Concerning the Beatification and Canonization of the Venerable Servant of God, Father Julian Maner, Priest of the Society of Jesus. On the twelfth day before the Kalends of February of the year in question, when our most holy Lord Pope Pius IX, with paternal benevolence, decreed that the matter of the signature of the Commission for the introduction of the cause of the aforementioned Servant of God, Julian Maner, should be considered in an ordinary session of the Congregation of Sacred Rites, without the intervention and vote of the Consultors, although the writings of the same Venerable Servant of God had not been thoroughly investigated and examined, the Most Eminent and Reverend Cardinal Aloysius Oreglia of St. Stephen, Promoter of this cause, at the request of the Reverend Father Joseph Boero, Priest of the Society of Jesus, and General Postulator for the causes of Beatification and Canonization of the Servants of God of the Society of Jesus, having considered the postulatory letters of several men of illustrious ecclesiastical dignity, and in the ordinary assemblies of the Sacred Rites held today at the Vatican, proposed the following question for discussion, namely: Whether the Commission for the introduction of this cause should be signed in this case and for this purpose? And the Sacred Congregation itself, after mature deliberation, and having heard the opinion and written statement of the Reverend Father Lawrence Salvati, Promoter of the Faith, judged that it should be written, Affirmative, that is to say, that the Commission should be signed, if it pleases the Most Holy [Pope]. On March 20, 1875. Subsequently, a faithful report of the above was made to our most holy Lord Pope Pius IX by the undersigned Secretary, and His Holiness approved and confirmed the judgment of the Sacred Congregation, and with his own hand signed the Commission for the introduction of the cause of the aforementioned Venerable Servant of God, Julian Maner. On April 8, 1875.

BISHOP OF OSTIA AND VELLETRI, CARDINAL PATRIZI, SECRETARY OF THE SACRED CONGREGATION.

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Placidus Ratti, SECRETARY.

[*Latin ed. p. 365*]

BY THE MOST HOLY FATHER, AND OUR LORD, THROUGH DIVINE PAPAL PROVIDIENCE, APOSTOLIC LETTERS, WHEREBY INDULGENCE IS GRANTED TO THE PRESIDENT OF THE PERUVIAN REPUBLIC, SO THAT HE MAY, BY RIGHT OF PATRONAGE, EXERCISE HIS OFFICE. PIUS, BISHOP, SERVANT OF SERVANTS, FOR THE ETERNAL MEMORY OF GOD.

Among the many blessings with which the merciful God has enriched the Peruvian people, the gift of the Catholic faith stands out most prominently. This truth, once received from the heralds of the Gospel, the Peruvians have diligently preserved, and have so revered it that many among them have emerged as heroes, whom the Church has deemed worthy of honor. This was a true glory for that people, and their zeal for its preservation has not diminished, even after it was separated from the dominion of the Catholic Kings of Hispaniae. Indeed, in the laws solemnly proclaimed for the establishment of the Republic, the Peruvians declared that they would profess and defend the Catholic religion, and would not tolerate the public practice of any other religion. Furthermore, many things have been done in that region, with public authority, which are conducive to the preservation of Catholic unity. For, generous increases or grants have been given to existing dioceses, and to newly established ones; assistance has been provided to seminaries or colleges established for the propagation of the faith; and with equal generosity, attention has been given to the needs of the poor and the sick. Acts, Vol. VIII, p. XCL.

[*Latin ed. p. 366*]

366 APOSTOLIC LETTERS are written to those converted in towns; and a great sum of money is publicly expended, either for repairing or adorning churches, or for building new ones, or for supporting and promoting religious worship. These things, which We have otherwise learned, were brought to Our attention by the distinguished son, Peter Galvez, envoy of the Republic of Peru to the Apostolic See, so that the Republic might obtain from Us a public and solemn testimony of its merits towards the Catholic Church. We, therefore, wishing to approve of the sentiments expressed by the Peruvian government through the aforementioned envoy, and following the example of Our Predecessors, who have rewarded with special graces and favors those who have deserved well of the Christian cause, and after consulting with some of the Cardinals of the Holy Roman Church, We have decreed to grant to the President of the Republic of Peru, and to his successors in office who profess the Catholic faith, as We grant by Apostolic authority, the right to enjoy within the territory of their Republic the same patronage, by which the Catholic Kings of Spain formerly enjoyed

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that territory, which had been separated from the dominion of Spain, by the grace of the Apostolic See; but with this condition and law, that those things which are assigned by name as a dowry, both to the clergy and to the sacred ministry and worship exercised in the dioceses of the aforementioned Republic, shall be observed faithfully and diligently, and that the Peruvian government shall persevere in fostering and protecting the Catholic religion. Provided that these laws and conditions are observed, it will be the right of the President of the Republic of Peru, and of his successors, to present to the Apostolic See worthy and suitable men for the vacant Archbishopric and Bishoprics, who, according to the rules prescribed by the Church, shall be canonically instituted; but in such a way that, within one year from the vacancy, unless a legitimate impediment arises, the presentation shall be made. To those who are thus presented, no right shall be granted to assume the governance and administration of the Church, before they have obtained the Apostolic Letters of institution, and have presented them to the Chapter of that Church, according to Our Constitution, which the Roman Pontiff issued on the fifth day before the Kalends of [Month].

[*Latin ed. p. 367*]

LL'HÊKAi: APOSTOLICAE: 7>Ú7 September. In the year of Our Lord one thousand eight hundred and seventy-three. It shall also be the right of the President of the Republic to present to the Bishop, in any Chapter concerning Dignities and Canonries by grace, and other benefices of Cathedrals, even if they are vacant in the Roman Curia, provided that their vacancy has been declared by ecclesiastical authority. Furthermore, the President shall enjoy the same right with regard to Canonries by office and Parishes, observing the customary canonical form of competition and examination, and, having done so, one shall be chosen from among the three most worthy who have been presented to him, to be then canonically instituted by the Bishop. Finally, in the temples of Peru, the President shall enjoy those honors which, by law of Patronage granted by the Holy See, the Kings of Spain were accustomed to have. These things we wish, we decree, and we command, declaring these Our Letters, and all that is contained in them, to never be infringed, impugned, or revoked in any way, by anyone of any condition, and dignity, under any title, and pretext, but to always be firm, and efficacious, and to have their full and complete effect and to obtain it. Notwithstanding any and all things contained in general and universal Councils, Apostolic Constitutions and Ordinances, and Our own and the regulations of the Apostolic Chancery, especially without prejudice to the right in question, and other things worthy of special mention, which may be contrary. We wish that to these present Letters, even printed copies, with the hand of a public Notary subscribed, and sealed with the seal of a person of ecclesiastical dignity, the same faith be given everywhere, as

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would be given to the present Letters if they were exhibited or shown. Therefore, it is not permitted to any human being to infringe this page of Our Decree, Indult, Statute, Mandate, and Will, or to dare to contradict it with rash audacity. If anyone should attempt to...

[*Latin ed. p. 368*]

368 *Liguori, Homo Apostolicus*. If anyone should presume to act as an APOSTLE, let him know that he will incur the indignation of Almighty God, and of the Blessed Apostles Peter and Paul. Given at Rome, near Saint Peter, in the year One Thousand Eight Hundred and Seventy-four (1), on the third day before the Ides of March, in the twenty-ninth year of Our Pontificate.

A. CARD. VANNICELLI, *Pro-Datarius*.

F. CARD. ASQUINIUS, *Visa de Curia*.

J. DE AQUILA, *et Vicecomitibus*.

Loen - Plumbi.

I. CUGNONIUS, *Reij. hi Secretaria Brevium*.

(1) According to the practice of the Apostolic Curia, the year is counted from the Annunciation of the Blessed Virgin, therefore it corresponds to the year 1874.

[*Latin ed. p. 369*]

To the Venerable Brothers, Bishops, and to the beloved sons, the Clergy and the faithful of the Helvetic region, who maintain unity and communion with the Apostolic See. PIUS IX, Pope. Greetings and Apostolic Benediction. Grave and persistent dangers and efforts, which the Neo-heretics, who call themselves old Catholics, are daily increasing in this region, to deceive the faithful people and to tear them away from the ancestral faith, move Us to diligently apply paternal care and concern for the spiritual salvation of Our children, in accordance with the highest duty of Our apostolate. We acknowledge, Venerable Brothers, and with sorrow we deplore, that these schismatics and heretics, in the territory of the Basileensis diocese and in other places in this region, while the religious freedom of Catholics is publicly suppressed by schismatic laws, with the favor of civil authority, exercise the ministry of their damned sect, and, having violently occupied parishes and churches with apostate priests, spare no kind of deceit or artifice to lead the children of the Catholic Church into schism. For it has always been and is the particular characteristic of heretics and schismatics to use simulation and falsehoods, so that these children of darkness, as the Prophet foretold, may be distinguished among them: "Woe to the sons who trust in the shadow of Egypt; you reject the word and hope in deceit and tumult." They have nothing more ancient than to act as if they are doing good, and through simulation and hypocrisy, they draw the unsuspecting and inexperienced into error, openly declaring

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that they do not intend to reform the Catholic Church and its visible Head, but rather that they are zealous for the purity of Catholic doctrine, that they are the heirs of the ancient faith and the only Catholics, while in reality they refuse to acknowledge all the divine prerogatives of Christ's Vicar on earth, nor do they obey His supreme authority. In order that...

[*Latin ed. p. 370*]

570 APOSTOLIC LETTERS: We know that heretics widely disseminate their doctrines, and that some of them have even accepted the office of teaching sacred theology at the University of Bern, hoping in this way to attract new adherents to their damned sect from among the Catholic youth. We, indeed, have already condemned and rejected this deplorable sect, which has brought forth so many errors against the principal principles of the Catholic faith, drawn from the old storehouse of heretics; which undermines the foundations of the Catholic religion; which impudently rejects the dogmatic definitions of the ecumenical Council of Vatican; which already threatens the ruin of so many souls. We have decreed and declared, in our letters of November 21, 1873, that those unhappy men who belong to it and adhere to it and favor it, are to be separated from the communion of the Church and are to be considered as schismatics. We now, once again, openly declare this, and we consider it our duty, Venerable Brothers, to act with you, so that, with the zeal that is proper to you and with the outstanding virtue of which you have given brilliant examples in the trials you have endured for the sake of God, you may, in every way possible, defend the unity of the faith among your faithful, and remind them to be on their guard against those insidious enemies of Christ's flock and their poisoned teachings, to avoid their religious practices, their pestilent instructions, their chairs of pestilence which they have set up without impunity to impart sacred doctrines, their writings, and any other contagion whatsoever. They must not allow any familiarity or intercourse with intruding priests and those who have apostatized from the faith and dare to perform the functions of the ecclesiastical ministry, who lack legitimate mission and all jurisdiction, but must abhor them as if they were strangers and thieves, who come only to rage, to slaughter, and to destroy. For the children of the Church must understand that this is done to preserve the most precious treasure of the faith, without which it is impossible to please God, and also to ensure that, while they themselves remain on the right path of justice, they may, in the end, attain the salvation of their souls through the faith. For we know that, besides being offensive to the divine constitution and the authority of the Church, and besides other laws that have been enacted, these [heretics] are also

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entirely opposed to the authority of the civil government.

[*Latin ed. p. 371*]

Venerable Brothers, We cannot, in view of the 371 canonical prescriptions which pertain to the Christian Sacrament of Marriage, and in which the authority and jurisdiction of the Church are entirely established, but exhort you in the Lord, that you explain to your faithful the Catholic doctrine concerning the Christian Sacrament of Marriage, which the Church transmits to them, and that you bring to their minds those things which We have frequently impressed upon them in Our Apostolic letters or addresses, especially on September 9th of the year 1855, and on the 27th of the same month in that same year, concerning this Sacrament, so that they may fully understand the sanctity and power of this Sacrament, and, conforming themselves piously to the canonical laws in this matter, they may avoid those evils which arise from the contempt of the sanctity of marriage, both in families and in human society. Moreover, We place great confidence in you, Beloved Sons, both pastors and ecclesiastical men, who are placed not only for your own sanctification and salvation, but also for that of others; We say, in the midst of the conspiracy of the wicked and the many dangers of seduction, that, through your piety and zeal, of which We have seen excellent proofs, you will be a strong comfort and help to your Bishops, and under their guidance, you will devote diligent and zealous effort to the cause of God, the Church, and the salvation of souls, so that you may strengthen the virtue of the faithful, show mercy to the infirm, and increase before God the merits which you have acquired through patience, priestly constancy, and ever-increasing fortitude. Indeed, the labors which those who serve in the legation for Christ must endure at this time are great, but our confidence must be in Him who conquered the world, and who helps those who labor in His name, and who will repay them with an unfading crown of glory in the heavens. And you, Beloved Sons, all the faithful living in Helvetia, to whom We address ourselves with paternal affection because of the concern We have for your salvation, understand well how precious is the gift of the Catholic Faith which God has bestowed upon you; spare no care, spare no labor, so that you may faithfully preserve that gift, and that you may keep intact and whole the glory of the ancestral religion which you have received from your forefathers.

[*Latin ed. p. 372*]

572 LETTER! We commend to you with the utmost care that you adhere firmly and constantly to your legitimate pastors who have received a legitimate mission from this Apostolic See, and who watch over your souls as if rendering an account to God for them, and that you obediently receive their words, keeping before your eyes the words of eternal Truth, which He said: ”He who is not with Me is against Me, and he who does not gather with

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Me, scatters." Obeying His doctrine, love His gentle yoke, rejecting those of whom our Redeemer said: "Beware of false prophets, who come to you in the clothing of sheep, but inwardly they are ravening wolves." Therefore, resist the ancient enemy of the human race with strength in faith, until the right hand of Almighty God shall extinguish all the weapons of the devil, to whom this is permitted to dare, that he may be overcome by the greater glory of the faithful, for where there is truth, divine consolations are never lacking (1). We have considered it necessary to write these things to you, Venerable Brothers and beloved Sons, in fulfillment of the supreme duty of our ministry, by which we are bound to rescue the entire flock of Christ from every danger of deceit, and to safeguard its salvation and the unity of faith and the Church. For every good gift and every perfect gift comes down from the Father of lights, and we earnestly pray that He may strengthen your forces in the struggle, and that He may protect you with His help and protection, and that He may mercifully look upon this region, that it may enjoy the tranquil peace of truth and justice, after the destruction of errors and the wicked designs of the impious. Nor do we omit to implore heavenly light for the miserable, even those who are erring, that they may cease to hoard wrath for themselves on the day of wrath and of the revelation of the just judgment of God, and that, while there is yet time for them, they may turn away from the error of their way through sincere repentance. You, Venerable Brothers and beloved Sons, join your fervent prayers to ours, that we may obtain mercy and find grace in timely help; and receive the Apostolic Blessing which we, from the depths of our heart, impart to each of you (1).

(1) St. Leo in a letter to Martin the Presbyter.

[*Latin ed. p. 373*]

LETTERS, APOSTOLIC. 575. To all, as a pledge of our most profound love for our beloved children in the Lord, we impart. Given at Rome, near St. Peter, on the 23rd of March, in the year 1875, in the nineteenth year of Our Pontificate. PIUS P. P. IX. LETTERS APOSTOLIC. Commending the zeal of the Bishop of Poitiers, who performed the funeral rites of praise for the Abbot of St. Peter of Solesmes. TO THE VENERABLE BROTHER OUR LUDOVICO EDUARDO, BISHOP OF PICTAVIENSIS, FROM PIUS PP. IX. Venerable Brother, Greetings and Apostolic Benediction. It was fitting that the funeral rites of praise should be performed for the illustrious ornament of the Family of St. Benedict, Prosper Gueranger, by a man who, as the best judge of virtues and knowledge, and as intimately familiar with him, could both express and reveal the soul and mind of the deceased. We are pleased, Venerable Brother, that you have undertaken this task of friendship, so that in your entire life you have demonstrated yourself to be the most suitable instrument prepared by divine providence, both for restoring the Regular Orders that had been destroyed, and for bringing the greatest benefit of

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these Orders to the attention of all. Indeed, you have clearly shown that you have achieved both, whether by reviving and promoting the monastic institute and discipline in France; or by advocating for uniformity of rites with the Roman Church, which had been disrupted by the vices of the times; or by defending and illustrating the rights and privileges of this Apostolic See; or finally, by combating all errors, and especially those opinions that are boasted of as the ornaments of our times; so that those...

[*Latin ed. p. 374*]

574 APOSTOLIC LETTERS, striving to unite sincere Catholics in concord, and that common observance and true filial affection with which France is joined to Us, seem to merit, to a great extent, that their efforts are due to the grace and wisdom bestowed upon them. Moreover, since these things have wonderfully fostered and strengthened the harmony of minds, which necessarily leads to the greatest benefit of civil society, they assert the true praise of a devoted disciple of *Benedictus*, who, while dedicating himself entirely to God and the Church, has provided so much benefit to civil society, both to himself and to his children. We hope that the Lord has already bestowed upon him the abundant reward for his works; and we are confident that your efforts will not be in vain; furthermore, since the deeds of the righteous serve as an encouragement to others, and since the merits of the deceased, in the face of recent errors, add a certain strength to that vigorous and outstanding defense which your excellent pastoral letters widely present to them. Receive, Venerable Brother, the Apostolic Blessing, which, as a sign of divine favor, and as a testament of Our special benevolence, We impart wholeheartedly to you and to your entire Diocese. Given at Rome, at St. Peter's, on the 29th of March, in the twenty-ninth year of Our Pontificate. PIUS PP. IX.

[*Latin ed. p. 375*]

FROM THE SECRETARY'S OFFICE: A BRIEF APOSTOLIC LETTER, whereby to the Abbot for the time being of Saint Peter of Solesmes, the perpetual use of the Great Chapel and a place among the Consultors of the Congregation of Saint Benedicts is granted. PIUS PP. IX. FOR FUTURE MEMORY: To those ecclesiastical men, whom this our age has favored, most distinguished by their religion, their doctrine, and their zeal and industry in promoting the Catholic cause, the esteemed son Prosper Gueranger, Abbot of Saint Peter of Solesmes, and the most eminent Master of the Benedictine Congregation in France, is rightly to be ascribed. He, endowed with abundant talent, excellent learning, and praised for his knowledge in the Canonical Disciplines, has, throughout the course of his long life, always directed his mind towards this goal, striving strenuously in his most important published writings to defend the doctrine of the Catholic Church and the prerogatives of the Roman Pontiff, to confound

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the efforts of adversaries, and to refute errors. Moreover, when We, with the applause of the Christian people, solemnly confirmed the heavenly Immaculate Conception of the Holy Mother of God with a solemn decree, and most recently, when We sanctioned the Infallibility of the Roman Pontiff teaching from the Chair, with the frequent consent of the prelates of the entire Catholic world, the same esteemed son, Prosper, did not fail in his duty as a Catholic writer, but, with works published for the full benefit of the Faith and of sacred science, demonstrated anew the excellence of his talent and his unwavering devotion to the Most Blessed Pope.

[*Latin ed. p. 376*]

576 LITT LR A V. A TESTIMONY of Apostolic zeal for the observance of the threefold [mysteries of] the Creed. But above all, He placed all His cares and thoughts in this, that the Roman Liturgy might return to Gallia, as it were, in exile. And in this matter, He acted in such a way that His writings, and also the constancy and singular industry, should be attributed to Him above all others, if, before He departed from this life, all the dioceses of Gallia embraced the rites of the Roman Church. Having spent almost his entire life striving for the good of the Catholic name, as it were, He now shines forth anew in the Benedictine Congregation existing in Gallia, which, although already well-known by other names, nevertheless, in some way, calls for a new document from us, a testament of our most willing intention. Since Our Predecessors among the Roman Pontiffs have left us many examples to imitate, by which they always added certain honors and benefits to the members of certain religious congregations, so that they might draw greater strength from them for the practice of religion, the acquisition of wisdom, and the exercise of Christian virtues, therefore, We, with Our own motion, with certain knowledge, and after mature deliberation, and by the fullness of Our Apostolic power, wish and decree that, henceforth, for all future times, the Abbot of S. Petri at Solesmes, for the time being in office, shall enjoy the use of the Great Cope, and that, upon the vacancy of that office, one of the monks of the Order of S. Benedict, of the Cassinensis Congregation, shall be appointed and assigned to that place among the Consultors of the Venerable Congregation of Our Brothers, the Cardinals of the Sacred Rites. These things We wish, We command, We decree, declaring that these Our Letters shall always be firm, valid, and efficacious, and shall have and obtain their full and complete effect, for those to whom they pertain, and at any time.

[*Latin ed. p. 377*]

Apostolic Letters, number 577, having been issued, shall most fully prevail, and thus, in the matters mentioned above, judgments and decisions shall be rendered, and shall have full force and effect, by any ordinary judges and delegates, as well as by Auditors of the Apostolic Palace, even in

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causes; and shall be declared void and of no effect, if anyone, through any authority, knowingly or unknowingly, should attempt to contravene them. Notwithstanding any Apostolic Constitutions and Sanctions, and to the extent that it may be necessary, the aforementioned Statutes and customs of the Congregation, strengthened by an oath, by Apostolic confirmation, or by any other means of confirmation, shall prevail, and all other contrary things shall be nullified. Given at Rome, near St. Peter, on the nineteenth day of March, in the year 1875, in the twenty-ninth year of Our Pontificate.

[*Latin ed. p. 378*]

578 FROM THE SACRED CONGREGATION CONCERNING CHURCH MATTERS AND THE DISPENSATION OF LAWS. December 20, 1873. In the City of F., there exists a Collegiate Church, formerly an Abbey, dedicated to Saint Mary Major, which, according to the records, was erected to the distinguished honor of a Collegiate by Pope Pius VI on the fourth day of July in the year 1801. From various benefices which at that time were attached to five parish churches of this City, a Capitular table was established, to be distributed among the dependent canons and four beneficiaries, for whom it is sufficient to shine with clerical rank, as the Bull of erection clearly indicates. The obligation of assisting the parish priest was imposed by the Bull of erection upon the two last canons; and the beneficiaries were granted the right of option to these canonries, preserving the order of seniority; yet, so that he who, on the occasion of a vacancy, wished to avail himself of this right, should first be examined and proven worthy by the Ordinary for the exercise of the care of souls. However, in the year 1868, with the authority of the Most Holy [Father], letters were issued on August 11th, whereby the obligation of assisting the parish priest, which had been imposed by the aforementioned Bull of erection upon the last two canons, was transferred to another obligation, so that both the service of the choir and the care of souls might be better served, and the parish priest was granted the permission to take as assistants those whom he deemed suitable, even outside the Chapter. Nevertheless, the right of option, which had been granted from the beginning to the older beneficiary, remained intact and protected. Summary of the facts.

[*Latin ed. p. 379*]

PRECEDENTS AND RIGHTS OF PREFERENCE (37 J) In the year 1871, a young Subdeacon, A. P., of the best hopes, was appointed to a benefice, which he took possession of on the twentieth of June. Two other benefices then became vacant in the following year, 1872. The first was conferred upon the Priest A. M., the second upon the Subdeacon S. O., who, before obtaining royal permission to take possession of the benefice conferred upon him, hastened to do so, which he indeed accomplished on the twenty-third of July. Finally, the aforementioned Priest A. M., after obtaining the

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royal license, requested possession of his benefice, which he obtained on the fifth of September of the same year. When the Priest A. M. began to contend that he was owed precedence by reason of his priestly ordination before the aforementioned benefices, both in the choir and in processions, and in other ecclesiastical functions, he encountered the opponent A. P., who maintained that precedence was rather due to him by reason of his earlier possession. Therefore, the aforementioned Priest A. M. submitted a suppliant petition to the Congregation of the Holy Council, so that the controversy might be resolved, both concerning precedence and concerning the right of preference in the event of a future vacancy of a canonry, namely, so that it might be determined whether such rights belonged to him by reason of his priestly ordination, or rather to the Subdeacon A. P., by reason of his earlier reception. The Holy Congregation received this petition and referred the matter to the Bishop for information and opinion, and so that, after hearing the Chapter, and separately the Subdeacon A. P., he might report on the just cause of the petitioner, transmitting a copy of the Bull of the erection of the collegiate church and of the capitular constitutions. The Bishop replied: "Having interrogated the Chapter concerning this matter, and having submitted to them the resolution issued by the Chapter, it is found that never has there occurred a similar case of controversy between clerics and priests concerning benefices, either concerning precedence, or concerning the right of preference in the choice [of a benefice]. While he transmits a copy of the Bull of the erection of the collegiate church, he cannot transmit another copy of the capitular constitutions, which are still entirely lacking, although it has been repeatedly urged by the Bishop that they should finally be completed."

[*Latin ed. p. 380*]

"Regarding Precedence and the Right of Preference: Since, therefore, nothing can be said based on statutes by which a collegiate church is deprived, nor based on observances which could never arise due to the lack of similar cases, it remains that the present question is entirely dependent on the common law, which grants the right of preference, taking into account the longer period of service and the earlier reception into the Church in which one serves, as is stated in chapter [reference to a chapter]. The reason for this provision of the common law is given by the Doctors, because, as is stated in Decree 36, no. 7, part 17, rec., options are the fruits and benefits of possession.

"However, can the *Bulla* [referring to a papal bull], which established the foundation and imposed the obligation of assisting the parish priest on the last two canons, be opposed to the common law? And can it be argued that those who, by the right of preference, are granted benefits, must necessarily be established in the Sacred Order? Indeed, if the law of the aforementioned foundation were still in force, since the obligation of

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assisting the parish priest has now been established by apostolic authority in the form of paying a certain and determined sum of money to any suitable priest who dedicates his efforts to the care of souls, it is no longer necessarily required that the person exercising the right of preference be established in the Sacred Order, in order for that right to be granted to a beneficiary, who not only possesses authority, but is also honored with the priestly character.

"Therefore, in the case of seniority, without any regard to the Sacred Order, and if a subdeacon, P., obtained possession fifteen months prior, then that person should be granted precedence in the exercise of the right of preference, rather than a presbyter, A. M., who is later in acquiring possession of the benefice.

"Let the Reverend Fathers decide what should be determined in the other part of the controversy, based on the cause of precedence, of which the Decree simply speaks, to which the presbyter M. refers in his treatise.

"Furthermore, if the custom of certain churches is examined, it is seen that, after beneficiaries have become priests, the right of preference applies to them."

[*Latin ed. p. 381*]

PRECEDENCE. AND THE RIGHT OF OPTATION 531 » integration. I believe that the following considerations are highly favorable in » this case: the words of the Bull of erection, from which four » benefits are derived, which exist in this Collegiate Church, are » intended, especially for those who are called to the » priesthood, so that those who are chosen for this » vocation may have the means by which they can more » easily devote themselves to it, so that, through » diligent study among them, they may become » capable and suitable for the ecclesiastical duties » to be performed, from which the greatest » benefit for the salvation of souls would result, and » divine worship would also receive greater » increase. This goal would be less likely to be » achieved if integration were denied to these » clergy who are already established in the » sacred orders, especially since in this city » other benefits are lacking that could be » conferred upon poor clerics. » Therefore, since the Most Reverend Fathers » have considered, with some appropriateness, » agreeing with the speaker in this matter, I » am permitted to ask this most esteemed » Order to also take into account, in » important matters, the qualities, that is, the » prerogatives, which are rightfully and » deservedly granted to their respective » members (the subdeacon P., whose » observations I submit herewith). » With all matters settled, and all points » considered, the cause to be examined » concerns both the right of precedence in » sacred functions, and the right of » optation on the occasion of a vacancy. And » these things were said to the Priest M. » concerning the right of precedence. It is » prescribed by law that the order and » degree of certain persons must be » observed; for it is the nature of law to » establish

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things reasonably and » orderly. Honors and duties should be » conferred upon those who are more » deserving, not upon all. The honors of » the decurions. And deservedly so; for if » precedence were not given to those of » greater rank, the order would not » subsist, and confusion would follow. » Given this, it is not surprising that it » is established in canon law that » Presbyters should take precedence over » deacons and subdeacons: "We decree that » Presbyters shall have the first place, » Deacons the second. Subdeacons the » third." Acts, Vol. VIII, Chap. XCJ, 25.

[*Latin ed. p. 382*]

%%1; Those who are of higher rank, and those who are older, should have precedence, and thus, this should be observed in order, even if those who are later ordained are admitted. Chapter. We decree concerning seniority and obedience. To this, the Most Holy Congregation in St. Severinus, on September 1st, 1067, decreed that precedence should always be given to those of higher rank. Therefore, since a prebend in a benefice is clearly of a higher rank than a subdeacon, due to the honor of the priesthood with which it is adorned, it manifestly follows that precedence should be given to it in processions and other sacred functions of the Church. It does not matter if a subdeacon precedes a prebendary in terms of seniority, because the former is not given any dignity by virtue of his earlier entry into possession of the benefice, and therefore has no right to precedence. Therefore, the decree of Alexander VII, on the 20th of September, 1659, seems to be applicable: "Having heard Pompilio Zacearino and Michael Angelo Bonaccefusio, canons of the collegiate church of St. Mary of the Martyrs in Rotunda, who, after a considerable delay, were granted, for the same reasons, the right to accumulate rights, contrary to the canon, John Carolus Vallonum, in the sacred order, who was ordained later than the aforementioned, and who finally, and most recently, presented this matter to the Ordinary, D. Carolus Ghisium, this controversy was brought before the Ordinary Congregation of Sacred Rites, in the presence of the Holy Father, and His Holiness decreed that canons who are priests, even though they entered into possession of their canonry later, where prebends are not distinct, should always and everywhere precede canons of a lower order, even if they entered into possession of their canonry earlier, notwithstanding the infamous custom which has been declared an unprescribed abuse, and for this reason, the aforementioned decree was issued by the collegiate church on the 29th of March of the present year, and it was commanded that it should be carried out with due diligence, and that it should be observed inviolably and without exception in the future. Nor is it otherwise in Monopoli. "On the part of Hyacinthus Venetianus, a canon priest of the cathedral of Monopoli, a complaint was made to the Sacred Rites against

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the canon, Anthony Sforza, a cleric of the same cathedral."

[*Latin ed. p. 383*]

PRECEDENTS AND LAWS, OPTIMALLY. 383 > The Congregation, through the following resolution concerning a doubt: Whether the aforementioned canon, a cleric, ought to sit both in the choir and in the chapter, and to stand in the place of his reception; or whether, indeed, after all the canon priests, even after he himself has been ordained a priest, he should nevertheless occupy a place that belongs to him from that time; and furthermore, the Sacred Congregation, adhering to other resolutions issued on similar matters, and especially in one concerning the church of Saint Mary of the Martyrs at Rome, on the days of March 29th and September 27th, 1659, declared again that canons, where the benefices are not distinct as presbyteral, diaconal, and subdiaconal, although they may be older in reception, are not to be given precedence over canon priests, even after those canons have become priests; and that it does not pertain to them to be reintegrated or given precedence over later-received canon priests, since the right once obtained from the priesthood is never lost, notwithstanding a contrary custom, which has been declared to be an improvable abuse. And thus it was judged and ordered to be observed in the aforementioned cathedral church of Monopoli, provided that there are only presbyteral benefices in it, on November 17th, 1674. The same decree of the Holy Congregation concerning precedence was issued in Sutri on August 17th, 1707. Since these things are so, there seems to be no room for doubt that a beneficiary, especially one adorned with the dignity of the priesthood, should be given precedence in the sacred functions over other beneficiaries who are not priests, even if they are older in the possession of the benefice. Concerning what has been said about the priest regarding precedence: It is known that precedence is a benefit, and as if a fruit of greater service rendered to the Church. Chapter last, on customs, in the 6th line, the word "older." But it seems beyond doubt that greater service is rendered to the Church by one who exercises the priesthood than by one who holds the order of subdeacon. Indeed, the priest offers the sacrifice for the people, administers the sacraments, and preaches; therefore, it is undoubtedly the case that he renders greater service to the Church. Nor should it be said that this service is greater by one who is older; for this must be understood as referring to the one who is older in order.

[*Latin ed. p. 384*]

384. PRECEDENCE AND THE LAW OF EQUALITY are by no means irrelevant in the matter of choice. Indeed, if a simple cleric or subdeacon is admitted to a benefice, or if he is capable of performing only a minimal service to the Church, then when a choice is offered to one who has rendered greater service, such as a priest, M, who has offered this service,

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it should spontaneously and naturally flow to him, as a priest, and not to the subdeacon, P, that the option be given to him. Furthermore, from what has been stated above, it is clearly evident that precedence should be given to the priest, M; therefore, it is only natural that he should also be granted priority in making the choice; otherwise, it would be absurd for the former to be considered later, and the later to be considered earlier. These considerations regarding precedence and priority are relevant to the choice offered to the subdeacon, P. Regarding precedence, it has been stated in law that within each class, those who were admitted to their class first should be preferred, even if they are perhaps lower in order, which stems from that rule of law which dictates it; and, just as the order of each should be observed in colleges, but the grade of the college should be considered, hence it follows that although a priest may hold a canonical diaconate, he should nevertheless be considered only as a deacon in the college of canons; and a canonical deacon is the same as one who performs only the duties of a deacon, and all others of the same class. The same must be said if a subdiaconal canonry is conferred upon one who is a priest, or a deacon. For since those who are of the same class are all equally canons, or equally subdeacons, the principle of time must be observed; for it is certain that among those who are equal in rank, he who has held that rank for a longer time carries with him also the privilege of honor. And from this, the example taken from the College of Cardinals can be understood. For although in the Sacred Order, someone may sometimes be added who excels in either the episcopal or patriarchal dignity, or in the order of deacons who possess the presbyterate, this does not mean that he surpasses the others of the same order, but rather that his own rank remains according to the length of time that each has held that dignity. No one, however, should...

[*Latin ed. p. 385*]

PRECEDENCE. It is established in the most special manner within the entire college of the Church that it is absurd and contrary to law to introduce something that is absurd and contrary to law. Moreover, it should not be considered absurd or contrary to law if, among those who are Cardinals by virtue of the order of priests or, respectively, deacons, those who were promoted earlier in time precede those who were promoted later, even if the latter may privately possess a higher order. Nor should it be considered absurd or contrary to law if the same principle applies to canons who are equally canons, deacons, or subdeacons in a collegiate church, that is, from the class of deacons or subdeacons. On the contrary, it should be considered that, with regard to clerics who have obtained a subdiaconal canonry, those who have not yet been ordained to a higher order should be considered. For the very fact that clerics obtain a subdiaconal canonry means that they are to be considered as subdeacons in the college of canons, and with regard to the degree of dignity, they are equally canons as all others

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who are truly subdeacons or who hold the diaconate or the priesthood. Therefore, since they are equal in the degree of collegiate dignity, it rightly follows that, if they are earlier in time, they should precede others who are later in the same degree of subdiaconal canonries. Therefore, if this applies in the college of Cardinals, in cathedral and collegiate churches, it certainly seems that there is nothing absurd or inconvenient if it also applies in the class of beneficiaries; for where the reason is the same, the disposition of the law should be the same. From these considerations, it follows that precedence should be given to the subdeacon P., as he is in earlier possession of the benefice. Regarding the second point, or the right of preference, it has been noted for the subdeacon P. that, according to the law, the canon who is earlier in possession is entitled to preference, since there is a certain fruit, or emolument, of possession, and this belongs not by reason of the office, but by reason of longer service rendered to the Church. See *Monet*, *Tractatus de Optione*, cap. 7, question 2, no. 36; *Gonzalez ad Regni*, 8; *Cancellariae Glossae*, 34, no. 4; 9, 100, so that it is owed not as a canon, but as one who is earlier, as has also been decided by the Rota before Merlin, in decisions 746, no. 34, and 308, no. 6. Therefore, it seems that the law 2 of the *Codex de Officis Magistrorum* can be applied, which states: "In degree, let him precede others who has earned better stipends, or longer labor."

[*Latin ed. p. 386*]

586 PRECEDENCE AMONG THE CANDIDATES. Given this, it seems that there is no doubt that the beneficiary P. should be preferred in the right of option, since he was the first to possess the benefice. But can it be objected that the principles of law cited apply only to canons, and cannot easily be extended to beneficiaries, since there is a great difference between these two groups? Such an objection does not hold, either in law or in fact; not in law, because Monet, in his treatise on option, chapter 3, paragraph 1, and chapter 4, paragraph 1, states that the right of option belongs not only to canons, but also to beneficiaries; not in fact, because the founding charter of the collegiate church mentions these beneficiaries, and refutes the proposed difficulty by saying: "Those (that is, the four beneficiaries) will enjoy the right of option, in the case of the respective vacancies of the canons and prebends, in accordance with the order of seniority." Therefore, it seems safe to conclude that the beneficiary P., even if a subdeacon, has precedence in this matter, and should be preferred in the right of option. Having considered these points for both sides, we turn to the following questions: 1. To whom does precedence belong in all sacred functions in this case? 2. To whom does precedence belong in the right of option in the case of a vacancy due to death, or to the resignation of a canon? The Most Eminent Fathers considered it appropriate to answer as follows: To 1, affirmatively, in favor of the priest M.; To 2, affirmatively, in favor of the subdeacon P.

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Let the readers draw the following conclusions regarding the precedence of clerics: 1. The Bishop can resolve disputes regarding precedence in funerals and processions with a brief order, summarily and plainly, and without the pomp and circumstance of a judgment. So says the Sacred Congregation of the Council, with witnesses Francisco Leone in *Thesaurus Fori Ecclesiae*, part 1, chapter 8, paragraph 18; Barbosa in *Summa Apostolica*, word "Praecedentia," paragraph 1, and others. 2. Precedence should always be given to those of higher rank. So says the Sacred Congregation of Rites, in Saint Severin, September 1, 1607. 3. Among Bishops, there is no other rule for precedence.

[*Latin ed. p. 387*]

PRECEDENCE!—Concerning the order of precedence:

1. The precedence of those elected or appointed, namely, that he who was first elected or appointed to a certain bishopric should precede another elected or appointed to it afterward, has been decreed by the Sacred Congregation in Segovia on March 31, 1609, number 4.

2. The precedence of bishops in Provincial Councils is to be determined according to the time of their ordination, and not according to the dignity of their sees. Sacred Congregation of Councils, April 9, 1596.

3. Precedence is always due to the canons of the cathedral church over the canons of a collegiate church, even in matters pertaining to the funeral rites of the parish of the collegiate church itself. Sacred Congregation of Rites, in Praenestina Cavarum, August 28, 1618.

4. Precedence in processions and funerals is to be given to the canons of the cathedral church. Sacred Congregation of Rites, in Ripan, July 30, 1616.

5. Precedence is due to the canons of a collegiate church over the presbytery, and other priests, even of the same city, when they are assembled together on the occasion of a synod, or some other similar cause. Sacred Congregation of Rites, in Faventina Brisiguellae, March 12, 1616.

6. Precedence among the curates of parochial churches is to be given, not by rule, but by the seniority, or the prerogative, of the parochial church, to the curates thereof. Sacred Congregation of Rites, in Ästen, March 21, 1609.

7. Precedence is always due to the secular clergy over the regular clergy, even in the churches of the regular clergy themselves. Sacred Congregation of Rites, in Firmana Terrae Sanctae Victoriae, March 31, 1618. And others.

8. Among priests, precedence is determined by the seniority of their ordination, and not by the degree of Doctor, because the order of the priesthood is far more dignified than the degree of Doctor. Sacred Congregation of Rites, in Mediolanen, November 29, 1603.

9. A beneficiary in the church to which his benefice belongs, must have precedence over other beneficiaries in the same church, and not over priests. Sacred Congregation of Rites, in nullius Provinc. Flor., de m vse, January

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1633.

10. Precedence among simple priests is due according to their seniority.

[*Latin ed. p. 388*]

388 PRECEDENCE AND JURISDICTION: ((PIANDI fianis, unless lesser priests supplement the duties and functions of the parish priest. Sacred Congregation of Rites, in Praenestina, precedents, August 13, 1701, 13. In processions which are held with the intervention of the cathedral chapter, precedence is due to the Beneficiary of the same [cathedral] above the parish priests. Sacred Congregation of Rites, in Taurinen, October 2, 1683, 14. The precedence which is due to permanent parish priests, the same is due to removable parish priests and curates at the will of [the bishop], because these also enjoy the privileges of permanent parish priests. Sacred Congregation of Councils, in Comensi, March 27, 1706. And to these, I add the following further excellent corollaries. 15. But you are not so; rather, let the greater among you become as the lesser, and the leader as the servant. For who is greater, he who reclines at table, or he who serves? Is it not he who reclines? But I am among you as the one who serves. 16. You call me 'Master' and 'Lord,' and you say rightly; for I am. Therefore, if I, your Lord and Master, have washed your feet, you also ought to wash one another's feet. For I have given you an example, that you also should do as I have done to you. 17. Learn from me, for I am meek and humble of heart. 18. Everyone who exalts himself will be humbled, and everyone who humbles himself will be exalted. The author of these corollaries is known. 19. Therefore, humble yourselves under the mighty hand of the Lord, and he will exalt you. James IV, 10.

[*Latin ed. p. 389*]

38:;- ELECTION OF THE CHAPTER VICAR. August 1st, 1862. The Bishop of the Diocese of R., having passed away on August 6th, 1861, in a city not far from his Cathedral, nevertheless, after scarcely two days had elapsed, news of his death was transmitted to the Chapter by the Vicar of another Diocese, through a letter sent for that purpose. The Canons, without any delay, were summoned by the Prefect to convene for the first Session, in which, having determined that the funeral honors for the deceased Bishop would take place on the 13th of the same month, it was decreed, according to the prescriptions of the constitutions, that the Canons should convene twice each day, without a new convocation, in the Chapter hall, to deliberate on the affairs of the Diocese, and to exercise the jurisdiction which was due to the Chapter, until a Chapter Vicar was elected. On the following day, the 9th of the month, at the evening session, some were present who proposed that the election of the Chapter Vicar should be carried out before the funeral ceremonies of the Bishop, lest the eight days assigned to the election by the Council of Trent might perhaps

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be wasted; but, having no opinion reached on this matter, the Canons adjourned from the hall. On the 10th, in the morning session, this matter was again brought up for consideration; but, with the Canons divided into two factions, no decision was reached regarding the hastening of the election. Meanwhile, the Canons, who were unwilling to allow the election to be postponed any longer, wished to admonish two Canons who had been absent from the previous Congregation, and to begin the scrutiny for the election of the Chapter Vicar at the next evening session. After the Canons had been assembled in the session, the question was raised as to whether the election should be begun, and, after votes were given, the affirmative opinion prevailed. And although the Dean opposed, and also left the hall, the election was begun. Furthermore, with five so-

[*Latin ed. p. 390*]

390. The Vicars Capitular, adorned with the title of Canon and Doctor of Canon Law, were found to be only five in number, and it was declared that only these five were eligible for election; and papers bearing the names of the eligible candidates were distributed to each. However, not every eligible Canon received a paper bearing his own name. After the votes were cast, the Prefect, the Canon of Secrets, and the senior Canon counted the ballots individually; but on the first occasion, none of them received the votes of the majority of the Chapter; therefore, the election being invalid, the session was adjourned. This happened again and a third time; but on the fourth ballot, which was held in the evening session on the tenth day of the month of Quarten, with the entire Chapter present, consisting of twenty Canons, of whom, however, one, namely the cleric G., was ineligible to vote due to a lack of ordination, and after the votes were given, ten votes were found for Canon S.; and when it was announced: "The majority is in favor of the Reverend Canon S.," it was immediately proclaimed that Canon S. had been elected as Vicar Capitular. However, the question was raised whether the majority of the Chapter had agreed to the election in light of the presence of the aforementioned cleric G., who had abstained from voting, and the matter was referred to another Chapter session for further clarification. This session was held on the 16th of the same month, and the Archpriest solemnly protested that the election of the Vicar Capitular, which had taken place on August 14th, was invalid; however, Canon S., having received the agreement of the other Canons present, assumed the office of Vicar Capitular; and immediately began to exercise it. The Archpriest was displeased with this and appealed to the Sacred Congregation of Councils, demanding that the election of Canon S. as Vicar Capitular be declared entirely null and void. The Sacred Congregation, in a letter dated January 7th of that year, recommended to Canon S. that he use prudent counsel and charity to dissuade the Archpriest from his purpose, and to lead him to accept a valid election. However, when all attempts to dissuade

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him proved fruitless, legal proceedings were initiated, and the Archpriest was brought before the Sacred Congregation to assert his rights.

[*Latin ed. p. 391*]

CHAPTER 391 OF THE CANONICAL EDICT: Concerning the election, a Becan, who was added as a member, opposed the election. He confirmed and upheld the arguments made to support his position. A summary of the discussion. THE ARGUMENTS PRESENTED BY THE ARCHPRIEST IN HIS FAVOR. Since the Council of Trent had not decreed anything about a special form for carrying out the election of the Capitular Vicar, the Archpriest argued that this election should be carried out according to what is prescribed in Chapter 42, concerning expulsions, regarding the election of Prelates. For the Capitular Vicar exercises jurisdiction as a Prelate; Marchetti, Practice of the Capitular Vicars, title 2. That chapter reads as follows: "Because, due to the various forms of election that some attempt to devise, many obstacles arise, and great dangers threaten widowed churches; we decree that when an election is to be held, with all those present who ought to be, and who are willing and able to conveniently attend; three worthy men shall be chosen from the College who, secretly and individually, shall diligently inquire into the votes of all, and shall publish them in writing shortly thereafter, without any obstacle of appeal; so that, after deliberation, he may be chosen in whom all, or the greater and healthier part of the Chapter, agrees. Otherwise, the election shall be invalid." From the above-mentioned chapter, the Archpriest argues certain conclusions regarding the necessity of a legitimate convocation beforehand; regarding the selection of scrutineers; regarding the secret inquiry of the votes, and their subsequent publication; and regarding the deliberation to determine which candidate received the votes of the greater and healthier part. Regarding the legitimate convocation that must be kept in mind, he adds the rule explicitly stated in Chapter 8, § 7, of the Constitutions of the Church's Chapters, which states: "All Chapters shall be announced one day after another, by affixing notices to the doors of the Chapter hall. This announcement shall be immediately carried out by the minor Canons to each member of the Chapter, personally, in their own homes."

[*Latin ed. p. 392*]

392. REGULATION REGARDING THE ELECTION OF THE CHAPTER VICAR. Chapter XI of these Constitutions, and others, state the following rule: "Human prudence dictates that more arduous matters be postponed to the subsequent Chapter, so that they may be more maturely considered." And, with these general principles in mind, concerning specifically the Chapters pertaining to the election of the Chapter Vicar, the Constitutions of the year 1831 state: "From the death of the Bishop until the election

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of the Chapter Vicar, the Chapter shall be convened twice daily, namely after Prime and after Vespers, and without any further notice... after the completion of the sacred offices and the burial of the Bishop's remains, the Chapter shall be held for the election of the Chapter Vicar." Similarly, the Constitutions of the year 1851, concerning the daily gatherings of the Canons, establish a distinction that is quite clear between the ordinary gatherings and the solemn Chapter in which the election of the Vicar is to take place. Those gatherings do not require a new announcement; for it does not matter if some of the Canons are absent, as is often the case due to important duties that detain them. This, however, is not the case with the Chapter Session; in which the most important matter, namely the election of the Vicar, is carried out. Therefore, the words of the Constitutions, "Human prudence dictates that more arduous matters be postponed to the subsequent Chapter," should be applied to such a Session. Hence, it has been the custom to post a notice on the doors of the Chapter Hall so that no one may claim ignorance, and therefore, an ordinary convocation of the assembly is not sufficient for the proper election of the Vicar. Furthermore, since in the aforementioned Chapter it is stated that the votes of all are to be recorded in writing and kept secret, and that each is to be carefully inquired into, the Chapter Constitutions, Chapter XI, prescribe: "According to the canonical Constitutions, all matters in this election shall be conducted by means of ballots." Moreover, this inquiry into the votes, which must be carefully conducted in writing or by means of ballots, in order that a comparison of zeal with zeal may be made, and the danger removed, that someone may give their vote to another without knowing it, undoubtedly requires that the names of those voting and those elected be known. Therefore, both names must be noted on the ballot. After the ballots have been collected...

[*Latin ed. p. 393*]

Regarding the ELECTION OF A CHAPTER VICAR: 393 votes were cast and counted, and the Supreme Pontiff orders that these be made public immediately, as stated in the preceding chapter; so that the publication takes place without any external interference or longer interval of time. After the publication, the counting of the votes must entirely cease, unless the Canons wish to invalidate the election, as decreed by Gregory IX in Chapter I on Elections. From this counting, he will be considered elected as Vicar, according to the prescribed rules of the Chapter Constitutions of the year 1831, who has obtained more than two-thirds of the votes. Thus, as stated in Article XI of those same Constitutions, the Archpriest, to whom this preface is addressed, declares: "This article was considered and approved by the assembly of Canons on April 6, 1826; and confirmed by our Bishop B. and recorded in the Acts of the Holy Visitation on the 10th of the same month and year." Therefore, this is the law that the Canons of R. cannot disregard in any way. Consequently, he will not be elected who has not obtained more

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than two-thirds of the votes. With these observations, the Archpriest first argues that a legitimate convocation of the Chapter did not precede the election of the Chapter Vicar. On the eighth day of August, the Canons convened determined the day on which due honors would be paid to the Bishop. In the session held on the ninth day, after the completion of the Divine Office, when some Canons proposed that the election of the Vicar should proceed quickly, the others firmly opposed, without any deceit or hidden agenda; but in the subsequent morning session on the tenth day, when the question was raised again, the Prefect, holding the highest office in the Chapter, spoke these words, in order to restrain the efforts of the opposing side: "I implore you, for the sake of my peace of mind, to consider the implementation of the procedures as we established in the first session." The Prefect's opinion was supported by the Archpriest and several other Canons, and the assembly was resolved. It is therefore clear that the Canons proceeded to the election in the evening session of the same day without a legitimate and solemn convocation. However, nothing is valid unless, before the election begins, a majority of the Chapter has agreed to begin it; for eight Chapter members opposed it.

[*Latin ed. p. 394*]

394. Regarding the VICARIATE CHAPTER ELECTION, and since the matter concerns those who are individually affected, it pertains to the exercise of the power of choosing, which belongs to each individual; their dissent, while others consent, must be observed. For this reason, the Dean, having issued a protest, withdrew from the assembly. However, the others proceeded to the election, without having consulted beforehand regarding matters which, according to Chapter 56 concerning Elections and the Glossa to Chapter 21 of the same title, are entirely necessary; Ferraris V. Electio Art. 4, n. 5: Before the election, after the electors have been called and assembled, consultations must be held; and no one of those to be chosen, especially in these times, should be considered suitable without due inquiry. Furthermore, another substantial defect was present; for the ballots were distributed, which indicated only the candidate to be chosen, omitting the names of those who were voting; as was previously noted, this is contrary to the intention of the sacred Canons, to the established opinion of the Doctors, and creates a situation fraught with danger. These things occurred in the first session, which did not result in an election; but they persisted in the other sessions as well, until an election was finally reached. In the final session, in addition to the flaws and defects of the previous sessions, the Archpriest presented further arguments against the validity of the election. Firstly, he stated that it was not sufficiently demonstrated that the Canon S. had indeed obtained the majority of votes. For, when nine votes for the same Canon had already been counted, the Prefect, observing his colleagues, made a gesture indicating that the end

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had been reached, and spoke the words: "but not today..." Meanwhile, the Secretary presented another ballot, which the Prefect, upon receiving it, was surprised to see, saying: "Is there another one?" and he counted it as the tenth vote for Canon S. Although some may doubt, based on certain circumstances, whether Canon S. truly received ten votes; nevertheless, he said, even if he were granted those ten votes, it does not follow that the same Canon obtained the votes of the majority of the Chapter. For there were twenty Canons present, and although one of them did not cast a vote due to an impediment of the Order, he was nevertheless present.

[*Latin ed. p. 395*]

ELECTION OF THE CHAPTER VICAR 395. The Archpriest, present at the meeting, stated that the number of votes should be increased. Therefore, he concluded, consideration must be given not only to those who have the right to vote, but also to those who are present by right, so that a majority of votes may be determined. If these principles are not followed in the election, he stated that appeal should be made to the Constitutions of the Chapter. Indeed, as mentioned above, Article XI of the Constitutions of the year 1831, which, due to its special acceptance and the Bishop's confirmation, takes the place of law, requires that two out of three parts of the votes be allocated for the election of the Chapter Vicar; the aforementioned Canon did not obtain these two parts of the votes; therefore, the Chapter Vicar was not elected. Then, according to Chapter 42, section 2, regarding Elections, the election should have been immediately made public, which, according to the Archpriest, did not occur. Furthermore, since the Chapter members convened in the same session, the opinions of the Doctors were to be sought before the election was made public; on August 16th, with the extraordinary Chapter convened, no examination of the validity of the election was made beforehand, and the Canon assumed the office of Chapter Vicar. And all of this concerns the form and solemnities of the election; concerning the person elected, the Archpriest presents what the Council of Trent, Session 24, Chapter 1, 6, regarding Reform, established: "Furthermore, he must absolutely establish or confirm an Official or Vicar who is, at the very least, a Doctor or Licentiate in Canon Law, or, if possible, someone else who is suitable." Expanding on this provision, the Archpriest notes that the Council primarily intended the suitability of the candidate, which results from sound doctrine, prudence, justice, and, of course, the virtues required in a Pastor. He examined only the testimony of the Doctoral degree, requesting that it be considered as conferring such suitability and being joined to it, but he did not examine it as a testimony of honor, because honor is sometimes granted even to the undeserving. Furthermore, the Archpriest added several things regarding the efforts made by Canon S. to gain the

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favor of some of the Canons in the election; from this...

[*Latin ed. p. 396*]

396 Regarding the election of the Capitular Vicar, it was argued, as stated in Chapter 26 concerning Elections: "Those who cannot be elected are those who, indeed, have solicited others with prayers to elect them." THE ARGUMENTS PRESENTED BY THE CHAPTER IN ITS OWN FAVOR. However, the Chapter responded to the difficulties raised by the Archpriest. And concerning the alleged lack of convocation, it pointed out that in the very first session, the Canons had decreed, according to the Chapter's constitutions, that capitular sessions should be held twice each day, without any new notification, until the Capitular Vicar was elected; and that this had been the practice in previous times as well. Therefore, the first convocation extended to all the matters to be discussed, and the Canons considered it as such. Furthermore, since it had been decided in the morning session of August 10th to begin the election of the Capitular Vicar in the evening session of the same day, the Canons who were absent were notified of this decision. Therefore, the election did not begin untimely, although it took place contrary to the will of eight Canons. The Canons, with the exception of one, approved the response given in writing by two Canonically appointed individuals to the Dean, who had raised this objection; although such absolute approval was not strictly necessary, since, by the judgment of the majority of the Chapter, the power of election, which belongs to each individual, suffered no injury or limitation whatsoever in the commencement of the election on the tenth day. Indeed, there was no question of transferring anyone's right to vote in the election to someone else, in which case the will of each individual would be required; but rather, the question was of commencing the election itself, which is a matter rather for the Chapter than for individuals. Furthermore, the Canons who considered the election to be untimely before the funeral of the Bishop, by expressing their vote on the matter to be decided, implicitly accepted the decision of the majority of the Chapter. Moreover, the Chapter stated that the Bishop had been far from his diocese, and that there were no examples in the same Royal Church of the election of a Capitular Vicar before the funeral honors were rendered to the Bishop.

[*Latin ed. p. 397*]

The election of the Capitular Vicar, which took place; as is confirmed, in the year 1831. It is certainly not in accordance with the truth what the Archpriest objected, namely, that the election lacked the proper time allotted for it; for the election was not completed on the tenth day, but in the respective session on the fourteenth day, and therefore, there was no lack of time for consultations, prayers, and all those things that could contribute to the proper conduct of the election.

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The Chapter then proceeded to describe the form of the election, which, because it is prescribed in the chapter, is the proper form for the election of Prelates whose absence leaves the Church without a Pastor; as is easily apparent from the introduction of the chapter. Indeed, some Doctors are found who recommend the use of this form of secret scrutiny in the election of Capitular Vicars. But more reputable writers, such as Pignatt., vol. 8, consult. 3, 4; De Luca, De Canonicis Disc., 26, n. 3 et seq.; Garcías, De Beneficiis, Cap. 7, part. 5, n. 21, 22, teach that this form is in no way necessary in the election of a Capitular Vicar.

Furthermore, it is not necessary to add to the form of the secret scrutiny that each elector and elected person must absolutely write down the name of the other. Indeed, the Constitutions of the Cathedral Church R. order that elections be held by means of ballots, according to the canonical constitutions; but, as many Doctors state, (1)

It should not be overlooked that De Luca, in the aforementioned passage, wrote: "Although the opinion of Geminiani and Lambert has been rejected, the opinion of the Archdeacon and Franchi, and others, has been accepted, namely, that the disposition of the aforementioned 'Decree' applies not only to Prelacies, but also to inferior Benefices; however, this applies only when dealing with an act that requires, for its perfection, the authority of a superior, as is the case with an election, which requires confirmation. Or, when dealing with a presentation or nomination to a Benefice, for which the institution or provision of a superior is necessary. Otherwise, in this case, in chapter VIII, 'Concerning,' as the subject matter is, in which there is neither a true election, nor a presentation, or nomination, requiring after it another act for its perfection, but rather, there is a simple deputation, meaning an order, which the Bishop or Prelate, or the Chapter in his place, is said to give to the Capitular Vicar, which order, for its essence, does not require writing, but can also be given orally... Indeed, clear letters serve as proof, but not as substance or perfection of the act, since there is no law requiring them for the substance."

[*Latin ed. p. 398*]

The forms of election for the Capitular Vicar are given, which are entirely in conformity with the sacred Canons. But concerning the matter under discussion, it has been established by the Chapters themselves, who have drawn up more recent statutes of the Chapter, and have confirmed them along with others. Furthermore, the Chapters, after the death of Bishop B., elected a Vicar, using the same form that the present Chapters employ. But no suspicion of fraud could arise in the preparation and distribution of the ballots, since, for the sake of convenience and with the best of faith, the Canon Secretarius prepared them, and the distribution was carried out in such a way that no one in any of the sessions doubted the integrity of the proceedings. Here, the Chapters point out that the Constitutions

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of the year 1831, which the Reverend Priest invokes, have no force today, as they suggest two parts of the votes necessary for the election of the Capitular Vicar. Indeed, these Constitutions have never been approved and confirmed by the proposed Bishops. However, it cannot be denied, the Chapter added in Article X, section 1, that these Constitutions did have the authority of Bishop B.; but since new Constitutions were completed in the year 1851, and approved by the Bishop, which, without any distinction between matters of greater and lesser importance, attribute any decision to the judgment of the majority of the Chapter, the force of Article XI is entirely lacking. Therefore, the election must conform to the new Constitutions, which do not require two out of three parts of the votes. To dispel the objection that arose from the presence of Clericum, as if he should have increased the number of votes, the Chapter replied that Clericum, who lacks the Order of Subdeacon, does not enjoy the right to vote; as is clear from Clementine II, concerning age and qualifications, and from the Council of Trent, Session 22, chapter 4, on Reforms. Furthermore, it stated that it is more appropriate for all Canons to participate and give their votes, as stated in Ferraris V, Chapter Art. I, n. 60. This is also clearly stated in Chapter 42, on Elections, where it says: "The election must be held..."

[*Latin ed. p. 399*]

"The VICAR CAPITULAR is elected in the presence of all those who ought to be present, and who wish to be present, and who can conveniently attend." Furthermore, when this presence is referred to in connection with what follows regarding the casting of votes, the meaning is that the election should be held by those who ought to cast a vote, and who wish to do so, and who can conveniently attend. The Chapter, therefore, proceeding with its deliberations, defended the truth of the tenth vote, noting that the Canons were astonished as to how the Archpriest could have connected so many things together, and arranged them in such a way that suspicion of fraud might arise. But the Secretary, whose role in the scrutiny was particularly initiated by the Archpriest, is of noted reputation, and, as the Prefect stated, if the matter is considered as it happened, all suspicion of fraud must disappear. In addition to the Secretary, who is the scrutator by office, the Prefect appointed an older Canon; and, with all present observing, the ballots are placed in the urn, then arranged in order, and opened one by one, with the names clearly noted. Therefore, there is no place for fraud. Indeed, when the Prefect was astonished by the last ballot presented by the Secretary, he declared that the Archpriest's account was entirely false. And if he ever showed a sign of admiration, he said, it was for the outcome of the election, which depended on the single ballot that was read. As for the publication of the election, the Capitulars immediately declared it to have been made, since the outcome of the scrutiny, after the votes had been counted, was announced: "The majority resulted in favor of the

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Reverend Canon S." The Capitulars, however, did not publicly announce the election, so that, in the meantime, the opinions of the Doctors could be collected and considered, in case any difficulty arose from the presence of the Clergy. But on the sixteenth day, with a formal convocation, the Capitulars convened and, with all present except the Archpriest, Canon S. assumed the office of Vicar Capitular. In accordance with the opinion of the Canons, and in response to the resolutions of the Sacred Congregation, the Chapter addressed the matters concerning the Archpriest.

[*Latin ed. p. 400*]

4. The Chapter raised objections concerning the mind of the Council of Trent regarding the qualifications of those eligible for the position of Vicarius Capitularis. Therefore, it was determined that, in accordance with the opinion of the Fathers of Trent, someone adorned with a doctoral degree should be elected as Vicarius, while others, although suitable, should only be considered in the absence of a person with a doctorate; as stated by Pigliateli, *Consult.* 34 and 36, and the Sacred Congregation in Capua, January 19, 1636. However, as is evident, the time before the Chapter had elapsed, before the selected authors and the resolutions of the Sacred Congregation, if they had wished to urge their proofs further in this matter. Finally, the Chapter, responding to the objections raised by the Archpriest, and stating that certain Canons had approached him with the intention of influencing the election of certain Chapter members, openly declared that it had not experienced any such influence. Furthermore, the Canon who was elected as Vicarius Capitularis, relying on the testimony of the Chapter itself, refuted the improper methods of which he was accused by the Archpriest; and concerning the subsequent convocation of the Assemblies, he repeated what had been stated by the Chapter, adding that the Canons, after the session in which the election began, had met among themselves on several occasions regarding the future session to complete the election. Considering the manner of the election, and relying on the authority of the *Glossa* and the Canonists, he maintained that the form of *Capitis Quia Propter* was not exclusive, and that the form used by the Chapter was legitimate; indeed, the votes were collected and read by three individuals who held the place of scrutineers, with all the Canons present, who ratified the procedure in each session by their presence. He declared that the alleged defect in the tenth vote was entirely alien to the truth; which was no less demonstrated by the repeated testimonies of the Chapter, than by the fact of the Archpriest himself, who, on the same day of the election and after 24 hours of deliberation, did not present any suspicion from this chapter to invalidate the election, but only argued that the presence of a junior Canon did not represent a majority of the Chapter, consisting of ten votes. Finally, Gagliardi, in *Inst. Iur. Can.*, Lib. 1, Tit. 19, offered a

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warning.

[*Latin ed. p. 401*]

LECTIONIS VICARII CAPITULARIS 4-01 §. 25: "Non est necesse," dicit, "ut in electione sit comparatio zeli ad zelum; sed solum comparatio numerorum ad numeros in suffragiis acceptis, itemque, juxta Reiffenst. Lib. 1. Decr. tit. 6, §. 12, n. 284, 285, publicationem electionis, nihil aliud esse quam publicationem suffragiorum. His rationibus, hinc et inde adductis, propositum fuit solvendum dubium: "An sustineatur electio Vicarii Capitularis in casu [omitted]? "

RESOLUTIO: - S. C. Congregatio die 9. Augusti 1862, causa cognita respondere censuit: "Affirmative et amplius."

EX QUIBUS COLLIGIS:

I. Nullam in iure adesse formam specialem pro Vicario Capitulari eligendo praefinitam; neque ipsum Tridentinum eam constituisse, dum ediceret: "Vicarium infra octo dies post mortem Episcopi constituere vel existentem confirmare omnino teneatur (Capitulum), qui saltem in iure Canonico sit Doctor vel Licentiatus, vel alias quantum fieri poterit idoneus."

II. Proindeque in electione Vicarii Capitularis sufficere si pars maior electorum praesentium in eiusdem electionem consentiat, quacumque ratione id fieret, sive in scriptis, sive oretenus: dum agatur de simplici deputatione quae in mandatum sonat et quae non exigit alium actum ad sui perfectionem.

III. Haud necessario sequendam esse formam tum Cap. 42, *Quia propter* de Eieci., tum Decreti Tridentini Sess. 25, Cap. 6, ut nonnulli putant; quia in primo agitur de electione Praelatorum qui principalem et perpetuam obtinent iurisdictionem, dum Vicarii Capitulares sint temporales et momentanei; et in secundo loquatur de electione Superiorum Regularium.

IV. Nihil in themate nostro obfuisse votorum computationi praesentiam Canonici iunioris, qui a iure prohibetur vocem in Capitulo habere.

[*Latin ed. p. 402*]

402 FROM THE HOLY CONGREGATION OF RITES: ACT OF CONSECRATION TO THE SACRED HEART OF JESUS, APPROVED BY DECREE FROM THE HOLY CONGREGATION OF RITES on April 22, 1875. O Jesus, my Redeemer and my God! Although You bear such great love for men, for whom You have shed all Your precious Blood to redeem them, You are nonetheless so little loved by them, and indeed, so greatly offended and outraged, especially through blasphemies and the profanation of holy days! Oh, if I could give Your Divine Heart some consolation, if I could

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repair so much ingratitude and contempt that You receive from most men! I would like to be able to demonstrate to You how much I desire to love and honor this adorable and most loving Heart before all men, and to increase Your glory! I would like to be able to obtain the conversion of sinners, and to shake the indifference of so many others, who, although they have the good fortune to belong to Your Church, do not have at heart the interests of Your glory and of the Church itself, which is Your Spouse! I would also like to be able to obtain that even those Catholics, who, although they demonstrate their faith through many external works of charity, are too attached to their opinions and refuse to submit to the decisions of the Holy See, or harbor sentiments that differ from its teaching, may repent, persuading themselves that he who does not listen to the Church in all things, does not listen to God, who is with Her. To achieve these most holy ends, and also to implore the triumph and stable peace of this Immaculate Spouse of Yours, the well-being and prosperity of Your Vicar here on earth, and to see the holy intentions of Him fulfilled, and also that the entire clergy may be more and more sanctified and become acceptable to You, and for so many other purposes that You, O my Jesus, intend according to Your Divine will, and which in every way benefit the conversion of sinners and the sanctification of the Just, so that we may all one day obtain the eternal salvation of our souls, and finally, because I know, O my Jesus, that I am doing something pleasing to Your most sweet Heart; prostrate at Your Feet, in the presence of the Most Holy Mary, and of the entire Celestial Court.

[*Latin ed. p. 403*]

DECREE 405: I solemnly acknowledge, by every title of justice and gratitude, that I belong totally, and solely, to You, my Redeemer, Jesus Christ, the unique source of all my good in spirit and in body: and uniting myself with the intention of the Supreme Pontiff, I consecrate myself and all that is mine to this Most Sacred Heart, to which alone I intend to love and serve with all my soul, with all my heart, with all my strength, making Your will my own, and uniting to Yours all my desires. As a public sign of this my consecration, I solemnly declare to You, my God, that in the future, for the honor of the same Sacred Heart, I wish to observe, according to the rules of the Holy Church, the days of precept, and to ensure their observance in those over whom I have influence and authority. Thus, uniting all these holy desires and intentions in Your beautiful Heart, as Your grace inspires me, I trust that I may give to It a recompense for the many injuries it receives from the ungrateful sons of men, and may find for my soul, and for the souls of all my neighbors, our common happiness in this life and in the next. So be it. This present document agrees with the original one existing in the Secretariat of the Congregation of Sacred Rites. In witness whereof, etc. From the same Secretariat, this day, April 26, 1875. For the Reverend

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Father Placido Ralli, Joseph Ciccolini, Substitute.

[*Latin ed. p. 404*]

404 DECREE. Numerous requests from throughout the world are addressed daily to Our Most Holy Lord Pope Pius IX, both from bishops and from almost countless faithful, in which they earnestly implore Him to deign to consecrate the entire world to the Most Sacred Heart of Jesus Christ, the Savior, for the fostering and increase of piety towards that Most Sacred Heart. Now, indeed, His Holiness, considering the gravity of the matter before God, in order somehow to satisfy these most pious desires, approves the following prayer, and proposes that it be recited in any language, provided that the translation is faithful, by all those who wish to devote themselves to the Sacred Heart of Jesus. Thus, all the faithful, by this unanimous formula of consecration, offering themselves to the Divine Heart of Jesus, will more clearly affirm the unity of the Holy Church; and in that same Heart they will find, and escape from, the dangers threatening the soul; and in the tribulations in which the Church of Christ is presently immersed, they will find patience; and in all difficulties, the firmest hope and solace. Therefore, His Holiness has willed that, for the present, this Decree of the Sacred Congregation of Rites be made known to all Local Ordinaries, and that the aforementioned formula of prayer be transmitted to them; so that, if they judge it to be in accordance with the Lord, and to be conducive to the good of their flock, they may take care to have it promulgated; and they may encourage the faithful to recite it, either together or privately, on the 16th of June of the current year, which is the centenary of the revelation made by the Divine Redeemer to Blessed Margaret Mary Alacoque, for the propagation of devotion to His Heart. To all the faithful who shall accomplish this on that day, His Holiness grants a plenary indulgence, applicable to the souls in Purgatory, in the usual form of the Church, provided that they are truly contrite, have confessed their sins, and have received Holy Communion, and that they visit a church or public oratory, and there, for a time, devoutly pray according to the intention of His Holiness. Notwithstanding any contrary provisions. April 22, 1875. CONSTANTINE, Bishop of Ostia and Velletri, Cardinal. PATRIZI, S.R.C., Prefect. Seals. Piae Ratti, S.R.C., Secretary.

[*Latin ed. p. 405*]

4. DECREE: The Most Reverend Lords, Bishops of N. and P., declared that in their Diocese, more burials than are permitted are found, which are not distant from the altar by the prescribed number of cubits, as the ecclesiastical laws establish. However, when other burials cannot be constructed, and the removal of the existing ones might cause offense, the aforementioned petitioners humbly requested that the already existing burials be permitted to remain, provided that, in the future, the laws

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prescribed by the ecclesiastical authorities regarding their construction be strictly observed. Furthermore, the aforementioned Sacred Congregation, having heard the report of this matter made by the undersigned secretary, has decreed as follows: The bodies of the deceased already interred in tombs which are not distant from the altar according to the canonical prescriptions, shall be removed, if it can be done conveniently. Afterwards, no burials shall be made in those places. And thus it was decreed and ordered to be observed. April 2, 1875. CONSTANTINUS E. P. OSTIENSIS ET VILIT. CARD. PATRIZI, S. R. C., Prefect. In the place of the Seal, Placidus Rolli, S. R. C., Secretary.

[*Latin ed. p. 406*]

406 PRAGUE. The cult of Confirmation, from time immemorial, has been observed for the sake of the Handmaid of God Agnes Přemyslava Ottokar I., daughter of the King of Bohemia, a nun of the Most Holy Order of the Poor Clares at Beata. § 1. Historical Account. Among the Holy Virgins who, following the example of the Most Blessed Mother, have illuminated the most excellent family of the Poor Clares with the splendor of their virtues, Agnes, called Beata, deserves to be mentioned, a source of honor and glory to the citizens of Prague, for whose sake the cult of Confirmation was proposed to the Congregation of Sacred Rites (1). Born into a royal family, for she was the daughter of Přemyslav Ottokar, King of Bohemia, she desired from her youth only the heavenly kingdom. She repeatedly refused royal, indeed even imperial, marriages, and after the death of her father, having heard of Clara of Assisi, she decided to embrace the same way of life. Therefore, she distributed the inheritance given to her by her father for pious purposes; first, she completed a monastery for the brethren of the Franciscan Order in Prague at great expense; then, she built and endowed hospitals for the poor and the sick; finally, she founded a monastery for herself and other virgins (1).

(1) This decree is contained in the preceding volume.

[*Latin ed. p. 407*]

mcni.TUM 407 prepared. After this, she joined a group of other noble virgins, and, having professed a monastic life under the rule of St. Clare, she lived according to that rule. The fame of her virtues reached the Supreme Pontiffs Gregory IX and Innocent IV, and also to St. Clare herself. Clare sent her most affectionate letters and gifts. Thus, these Supreme Pontiffs also praised her, and sent her apostolic letters. Gregory, moreover, ordered that she be appointed as the head of the monastery. The position was accepted by the venerable Agnes, but shortly afterwards, she refused the title of Abbess, and wished to be called "sister major" of the monastery. She refused to accept riches from the king, her brother, and she wished to retain no rights or dominion over any earthly goods among her sisters; for she was

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most devoted to poverty. But Agnes shone not only with virtues, but also with miracles; therefore, her name was renowned throughout Germany, and many noble young women imitated her example, either by dedicating themselves to a monastic life, or by dedicating their virginity to God in other monasteries. Finally, she died, full of merit, in the year 1282, in her monastery, which is still called the Monastery of St. Agnes, although the holy virgins have long since left it, and the buildings themselves have been converted to secular uses. From her death until this present age, she has always been venerated with ecclesiastical devotion; and the Order of the Knights and Clerics of the Cross, which chose her as their heavenly patron, and reveres her as the founder of their hospital, has humbly requested the Apostolic See to confirm her cult. §. 2 The documents upon which the cult of the most blessed Agnes is based are numerous. After all that was to be done in the process had been completed by the Deputy Judge, the Archbishop of Prague, the Fiscal Promoter, the Registrar, and the Nuncio, and after many witnesses had been examined, and after many documents, of whose authenticity there was no doubt, had been duly considered, the Judge...

[*Latin ed. p. 408*]

408 The DECREE was solemnly pronounced: "From time immemorial, and before the year one thousand five hundred and thirty, when the Urbanian centenary began, the Servant of God has been honored with public ecclesiastical worship in this diocese (Prague); and this worship has never been interrupted, nor essentially diminished; rather, it has been increased at various times, and has been brought down to our own age; therefore, it does not in any way impede the inclusion of this case among those excepted by the Decrees of Pope Urban VIII." But this judgment was rightly pronounced, and this is easily demonstrated. Firstly, Agnes was publicly venerated from almost the time of her death, and solemn offerings began to be brought to her tomb. Indeed, George Crugerius, of the Society of Jesus, recounts in the life he wrote of Agnes that Wenceslaus III, King of Bohemia, and his wife Judith of Habsburg, invoked the intercession of Agnes for their little daughter Margaret, for whose health action had already been taken; and that, having made vows, they fixed a certain amount as an offering to the heavenly healer, and fulfilled their vow. He also recounts that Elizabeth, mother of Charles IV, the Emperor, having been brought to the brink of death, was healed through the help of Agnes, and therefore she, as a witness to Agnes's beneficence, continued to honor the great patroness with solemn worship and royal gifts as long as she lived. Therefore, shortly after the death of Agnes, offerings were publicly brought to her tomb, and solemn worship was rendered. It is certain that Crugerius compiled the aforementioned life from the most ancient Bohemian manuscripts, contemporary with Agnes herself. 2. Moreover, not only this; for in the 14th century, Agnes was called a Saint by John Marignoli, an Italian Bishop of Bisig-

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nano, who resided in Prague with Charles IV, and who was his companion from the year 1355. This man wrote a chronicle, at the urging of the same Emperor, in which the following is recorded: "In the year of Our Lord one thousand three hundred and thirty-two, the Friars Minor received a house in Prague. And in the same year, Saint Elizabeth was canonized. And in the following year, Saint Agnes, daughter of King Premisl, having rejected a royal and imperial marriage, entered the cloister with ten companions."

[*Latin ed. p. 409*]

DECREE 4Ó9. The following is taken from the *Chronicon* of an anonymous author of the same 14th century. Furthermore, the anonymous author writes: In the same year (1348), Queen Elizabeth sent letters to the Pope concerning the canonization of Blessed Agnes at the order of St. Francis. 3. Indeed, in the same century, her feast day was solemnly celebrated on March 2nd. For, in the *Kalendarium Cruciatorum* with a red star, written in the year 1356 and presented to the Judge, it is noted under March 2nd: The feast day of Blessed Agnes, foundress of the Order of the Red Cross. 4. It is established that in the 15th century, Agnes was honored with public worship, as evidenced by a panel, which a delegated expert affirms was painted in the year 1487. This image depicts Agnes with a halo around her. 5. In the 16th century, Daniel Weleslawinus, in his historical calendar, which was published in Prague in the year 1578, calls Agnes, of whose deeds and death he recounts some things, "Blessed." In the 17th century, she is also adorned with the same title in the *Annales Ordinis Minorum*, published in Rome in the year 1662 by Crugerius in his work *Sacrae Memoriae Regni Bohemiae*; by Bollandus in *Acta Sanctorum* for the month of March, published in Antwerp in the year 1668, etc. The statutes of the Order of the Red Cross, approved by Clement X in the year 1672, command that the members of the Order fast on the days immediately preceding the feast day of Blessed Agnes. In the year 1682, a work was published in Prague by Bohuslaus Balbino, entitled *Miscellanea historica Regyii Bohemiae*, or *The Holy Kingdom of Bohemia*. In Book IV, it contains a catalog of the Saints and Blesseds of Bohemia, whom either the Apostolic See has honored with heavenly honors, or, as he himself writes, with the permission of the same See, are venerated as Saints or Blesseds, among whom is included Saint Agnes, daughter of King Premisl, of the Order of St. Clare. A monument of worship from the 17th century exists in the main altar of the temple of the Convent of the Red Cross in Prague; for there are in that altar panels with silver margins, which experts have identified as being from the latter part of the 17th century. In these panels, Blessed Agnes appears in half-figure, dressed as a nun, holding a crucifix in her right hand, with a

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crown on her head, which is surrounded by rays.

[*Latin ed. p. 410*]

410. The Decree of the Directory of the Divine Order of the Cross-Bearers of the year 1704, dated March 6th, establishes the Feast of the Blessed Agnes, its foundress, to be celebrated with a double rite (classis). This is also stated in the Directories of the years 1705, 1706, and 1725. Florian Hammerschmied calls the Blessed Agnes by this name in his book, entitled "Prodromus gloriae Pragenae," published in 1723; and he is the author who calls the Hospital of the Cross-Bearers the "Agnesianum," because in that very year, 1693, on March 6th, a chapel was blessed under the name of the Blessed Agnes, according to the rites of the Holy Roman Church. In the year 1725, Ignatius Gregory Hettinger compiled a book of "Memorabilia" of the sacred and military Order of the Cross-Bearers, and he recounts the prayers customarily recited in honor of the Blessed Agnes. In the calendar appended to the work of Johann Bockovscky, a Cross-Bearer, entitled "Moesta turtur," published in Prague in 1782, among the saints whose memory is celebrated in the month of March, on the 4th day is found "Agnes, Virgin, born in Prague, of the Order of Saint Clare." In the same work, there are also prayers to be recited in honor of the Blessed Agnes. Monuments of the cult of the same 18th century are: 1. A tablet on the main altar of the Monastery of the Cross-Bearers in Prague, which, according to expert testimony, was made at the beginning of that century. On it, Agnes is depicted wearing a crown on her head, with a halo. 2. Another image of Agnes is depicted in the ambulatory of the Priory of the Cross-Bearers. Agnes is depicted wearing a crown and a halo. This tablet is affirmed to have been made in the 18th century by an expert. 3. A stone statue above the door of the ancient Monastery of the Poor Clares, which has long since been converted to secular uses. It depicts Agnes; she stands on a pedestal, in the middle of which is affixed a shield with the inscription "S. Agnes." In the Roman Catholic Calendar of Feasts and Saints, appended to the work "God is wonderful in his saints," published in Gratz in 1830, on March 6th, it is stated that the "Blessed Agnes, daughter of Bohemia, of King Oltokar" is to be celebrated. Among the proper offices of the Holy Military Order of the Cross-Bearers with the red star, published in Prague in 1853, is the day of

[*Latin ed. p. 411*]

DECREE 4M, March 2nd. The following prayer is to be recited on the Feast of the Blessed Agnes, Virgin, Foundress of the Hospital of Prague. To this work, entitled "Five Scarlet Roses," published in the year 1862, is appended an Ecclesiastical Calendar, which, in the month of March, on the 7th day, mentions the Feast of the Blessed Agnes, daughter of King Oltokar, Virgin, and Religious. Those witnesses, learned and diligent in

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their investigation of the documents concerning the life of Agnes, all testified that the cult had been practiced from time immemorial, indeed, from the death of Agnes, and they affirmed this both by the authority of the documents they presented and by tradition. For one testified: "Agnes was immediately after her death called and venerated as a saint by the voice of the people"; another: "Devotion and worship were immediately offered to this Handmaid of God after her death." Another: "The Handmaid of God, Agnes, was continuously honored by the Knights and by the faithful, either by being called blessed and holy, or by being remembered among the faithful as a Blessed, and so on, that we might pass over the others in silence."

And what of our cult at this time? Certainly, the following suggest that it is most excellent.

a) Before the stone statue, of which we spoke above, hangs a lamp which has been preserved by the devotees of St. Agnes from all times.

b) Agnes is by the citizens of Prague called no otherwise than St. Agnes or Blessed Agnes.

c) The monastery, already built by Agnes, although it has long been converted to secular uses, is nevertheless referred to by the people no otherwise than the Monastery of St. Agnes.

d) The faithful often turn to her in their needs, and seek her patronage through prayers and litanies printed in prayer books, and by lighting candles in her honor.

e) The Sacred and Military Order of the Cross with the red star has chosen her as their heavenly patron, and celebrates her feast each year with solemn rites; a gathering of the people takes place for this feast; and more abundant alms are distributed to the poor by the Crossbearers.

[*Latin ed. p. 412*]

4f2 Ó ECK R tisi f) The Order of the Crucifers recites the proper Office for the feast of Saint Agnes according to the double rite, on the octave day, if the feast is celebrated outside of the season of Lent; and this feast is considered the principal feast of the Order. g) In the Universal Martyrology, by Albert Müller, published in Ratisbon in the year 1860, on March 6th, it is stated: "Blessed Agnes, daughter of King Ottokar of Bohemia, a virgin and abbess, who died in Prague in the Order of Saint Clare in the year 1282." Therefore, if the acts of the inquiry have been validly completed; if it has been proven by witnesses, documents, and monuments that the cult of Agnes has been practiced from time immemorial until our own days; then there seems to be no doubt about the justice of the sentence pronounced by the judge delegated by the Most Reverend Bishop of Prague. §. Observations 3. The Promoter of the Faith, regarding the doubt: Whether the sentence pronounced by the Ordinary concerning the cult practiced from time immemorial by

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the Servant of God Agnes, or concerning the exception from the Decrees of Pope Urban VIII concerning the cult not to be given to the Servant of God, should be confirmed in the case and to the effect of which we are speaking? Setting aside the observations concerning the legitimate form of the adorned process, which the Promoter of the Faith himself affirmed to be of lesser importance, only those that pertain to the substance of the matter should be considered. He observed that 1. The documents that have reached us so far present such an uncertain history of this Servant of God, that, at least in several respects, they should be considered as fables. In the first place, as regards the year of her birth, and also the time of her death, the accounts differ in various ways. For while all disagree about the day, some say she died in the year 1283, others in the year 1282, 81, 76, 65. If we inquire about her parents, some say she was the daughter of Přemysl Ottokar I, King of Bohemia, and of Constance, sister of King Andrew of Hungary, who was the father of Saint Elizabeth; others, however, say that her father was Ottokar U., son of King Wenceslaus I.

[*Latin ed. p. 413*]

t) Concerning the aforementioned controversy. This discord is so grave that the very subject matter under discussion becomes utterly obscure.

2. Regarding the cult of Agnes, as initially asserted, it must be observed that she was buried in the monastery of the Clarissan Nuns in the city of Pragensis, in a chapel dedicated to the Divine Virgin, not with the recitation of prayers by Tobias, the Bishop, nor by priests of that rank, but by a certain barefooted monk named Bonagratia. This clearly demonstrates that the Bishop and the clergy of Pragensis did not wish to honor the funeral and burial of the pious Queen with undue reverence. Although a more recent writer, Ignatius Greg. Norb. Hettinger, attempted to explain this, claiming that they rejected the honor because they considered themselves unworthy of this task, this assertion is entirely unfounded.

3. The second witness appears to be in error concerning the office, deriving an indication of the cult from the fact that the Queen of Bohemia, Elizabeth, had urged the canonization of Agnes by the Apostolic See; indeed, not only is nothing about the cult mentioned in these documents, but rather, several things are presented that suggest that no veneration was given to Agnes up to that time. For:

1. The Bollandist Acts do not present a letter from the Bishop and clergy of Pragensis, but rather a petition from certain individuals from the laity, in which no further mention is made of the cult, or of the title of Blessed, granted to the Servant of God.

2. These facts suggest that the Servant of God had been forgotten; for they say: "That the light, for the variety of Lords who succeeded in the Kingdom of Bohemia, was so hidden under a bushel, that the life and sanctity of the Virgin did not reach the knowledge of the Apostolic See, nor of yourselves."

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4. Charles IV, the Emperor, son of the aforementioned Elizabeth, discussed the canonization of the Virgin with the Roman Pontiff; and yet, what transpired remains entirely unknown. It is, however, reasonable to conjecture that the Roman Pontiff did not consider the Servant of God worthy of canonization, which would raise her from the dust. In the year 1436, the process of canonization was indeed begun again, but it ultimately failed in the year 1450, due to the impossibility of finding the relics of the Blessed. Acts, Volume VIII, page 801.

[*Latin ed. p. 414*]

5. However, there were formerly certain signs of veneration in the tomb of Agnes, namely, certain offerings placed there; nevertheless, it is certain that, with the passage of time, the tomb was forgotten, and its veneration fell into the oblivion of many faithful, as the witnesses brought forth by the Promoter themselves readily admit.

6. These things transpired for almost 350 years; for, it is said that the veneration revived when, under the rule of the Most Eminent Cardinal de Harrach, the body of the Servant of God was sought and found; and this occurred in the year 1643, a century already elapsed.

7. However, let no one think that the religious residing in the monastery at that time were seeking the body of the Servant of God; for, they began to dig, hoping to find a treasure that would be necessary for the highest needs of the monastery, having heard that flames had erupted in that place, which are often signs of hidden treasures. But they found nothing other than the bones of a human body. Hence, some began to doubt whether those remains might perhaps be those of Agnes; especially since a rumor arose that a certain fragrance emanated from them. Then, the Archbishop of Prague, Cardinal de Harrach, ordered that these bones, being entirely uncertain, and found outside the altar, without any indication of veneration, be placed separately in a certain chest in the adjoining sacristy. Later, another body was found there, enclosed in white marble, and that one was discovered protruding beneath the altar, as if in a tomb. But Father John Tanner, Bollandist writer, suspects that this body is that of some Empress or Queen buried in that temple. Therefore, from this discovery made in the year 1644, not only did the veneration of the Servant of God not progress, but rather it was brought to a final impasse, due to the grave doubt that arose concerning the person to whom, at one time, that veneration might perhaps have been directed.

8. And what happened afterwards, until our own time? Due to the devastation caused during the Hussite times, and also during the time of Emperor Joseph II, the monastery was partly destroyed and partly transformed. This is what the witnesses state. Therefore, no traces whatsoever of the burial of Blessed Agnes, or of any other vestiges of the former sacred veneration, are found. Thus, the acts of the judicial

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visitation state. As mentioned above, concerning...

[*Latin ed. p. 415*]

DECREE: Near the gate of the overturned monastery, a stone statue is visible, constructed in the year 1703, with the inscription "S. Agnes" added. And beneath this statue, there is a lamp, in which a light is sometimes lit throughout the year, in honor of the Blessed Agnes. But what of it? Does this recent monument, now four centuries old, suffice to warrant the exposition of her remains for public veneration?

9. But do not witnesses testify? According to reports and what has been heard, it is said that a chapel in honor of Saint Agnes was consecrated in the church of the Pragensian Crossbearers. But there is nothing certain about this chapel; and even less is known about when it was built, although the church itself is said to have been built in the second half of the 12th century. However, as the president of the Pragensian Convent himself testifies, there is currently no such chapel in our church. There is, of course, a private oratory of the Convent with images of the Blessed Agnes. But this concerns a private matter, and not public worship, and concerns images displayed in churches solely for the public veneration of the faithful.

10. Furthermore, the praises of the blessed and holy Agnes, attributed by writers, are few in number, and of lesser authority.

§. 4. Replies to the objections raised. To 1st objection: What harm is there to the sanctity of someone if the year of their birth or death is uncertain, provided that the history is certain? Does this ever happen? How many saints are celebrated in the martyrology whose birth and death dates are unknown to us? Who will ever be able to tell us the day of the birth of Saint Joseph, the illustrious patron of the universal Church, or of the Apostles, so that we may rank them among the saints? How many martyrs, confessors, and virgins? Should these not be included among the saints, or should they now be removed from the list of the blessed? Furthermore, if the year is uncertain, the century is certainly known, since all writers agree that Agnes was born and died in the 13th century. And since we know from authentic documents that her cult began in the 14th century, it is futile to inquire about the year of her birth or death. Whatever the day on which she was born or died...

[*Latin ed. p. 416*]

4Í 6 DECREE: It is certain that she died long before the beginning of the Urbanian cycle (1). But the variety of opinions concerning the parents of Agnes does not cause difficulty. For all the writers affirm that she was the daughter of King Přemysl Ottokar. They also name her mother, and, enumerating the Bohemian kings in order, they call her Constantia, and Přemysl Ottokar the First. There is also an inscription attached to an image of Agnes, which states: "B. Agnes, daughter of Ottokar II, King of

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Bohemia, the Third." But could an unknown painter have undermined the authority of so many writers? As for the second, the most illustrious defender of the faith either did not read, or deliberately omitted, the entire account of Agnes' death and funeral. The Prague Codex, brought by B dlando, after describing the death of Agnes in n. 15, states: "To [whom] the sight of the body, neither rigid nor discolored, was granted, a gathering of people of all ages and conditions assembled for many days, and they declared themselves blessed, who were able to touch with their rings, or necklaces, or belts, the limbs worthy of heaven. Finally, they were enclosed in a wooden sarcophagus, which, bound with solid iron plates and locks, protected them so that they would not be torn or dismembered. Lady Scholastica Sternbergae, a friend of Agnes and beloved by Agnes, arrived and prayed greatly. She also presented a pontifical diploma, so that the most beloved Virgin would not be deprived of a final view. While the women of that place deliberated whether to grant her request, divine power intervened, which dissolved the iron bonds of the sarcophagus, so that Scholastica could freely contemplate the treasure she desired. She was buried in the chapel of the Divine Virgin, not by Tobias, Bishop, nor by priests of that rank who refused the assigned duty, but by a certain, as had been foretold, barefooted monk, called Bonagratia. From this account, we learn that the funeral of Agnes was most illustrious and honored, even more so because God Himself (1) This cycle begins in the year 1534; it ends in the year 1634.

[*Latin ed. p. 417*]

SECTION 41. To illustrate this point, consider the following. What if the Bishop and the priests refused to grant the dignity of burial to the body of Agnes? It happened not because they did not recognize Saint Agnes, nor because they considered themselves less worthy of this office; but perhaps because they considered it improper for a woman to be carried by prelates, as is stated in another manuscript codex, related by Bollandus. But let us suppose that the Bishop and the clergy were unwilling to honor Agnes' funeral with such great solemnity. What then? Could this austerity obscure the sanctity with which Agnes shone? Does it present any obstacle to the veneration of her? By no means; for this did not prevent Agnes from being invoked in prayer, miracles from occurring at her tomb, from being venerated by Elizabeth, and from being called a saint and blessed by the writers of that age. Furthermore, the Pragensem codex, after recounting the austerity of the Bishop and the priests, states that the citizens, even those of noble birth, frequently gathered at the tomb of Agnes, and made vows to Christ in the name of Agnes; which certainly attest to the glorious nature of Agnes' tomb, and are evidence of her veneration (1).

3. Having set aside these points which the defender of the faith brings forward, because they are irrelevant to the matter, he concludes that no cult of Agnes existed at that time, especially because the following words are

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found in that petitionary letter: "She, that lamp (Agnes), for the variety of lords, etc." But what does this imply against the cult? The illustrious censor asks: Was the life and sanctity, indeed, the veneration of all those whose cult is to be approved and confirmed by the Holy See, known to the Pontiff before this proposal was made? Certainly not. Therefore, it cannot be deduced from this that there was no cult, which other arguments demonstrate (1).

(1) I would add: and that the Bishop and the priests refused to honor Agnes' funeral for reasons entirely external to the fame of her sanctity. Since the judgment of the people would have greatly rebuked the Bishop and the clergy if they had refused to grant honors to Agnes' body, because they did not consider her worthy of such veneration. The ecclesiastical authority, or opinion, held great weight, especially at that time.

[*Latin ed. p. 418*]

418. Moreover, it must be added that those words in the letter signify nothing other than that the variety of successors in the Kingdom of Bohemia has hindered the offering of prayers to the Supreme Pontiff in order to obtain the solemn canonization of Agnes; and no one will deny that this petition does not exclude the already existing veneration, since one thing is veneration, even if public, granted without any decree of the Holy See, and another is veneration which is prescribed by solemn canonization. And indeed, the fact that the knowledge of Agnes' sanctity did not reach the Holy See, according to those words, depended on the fact that more kings had succeeded in the kingdom of Bohemia. But who will say that this variety of successors could not have prevented the knowledge of Agnes' sanctity from reaching the Holy See, even if as many kings had succeeded in Bohemia as there were years that had elapsed since Agnes' death? And indeed, Gregory IX knew of Agnes' sanctity, who wrote to her a most loving letter, as the Holy Clara knew her. But the variety and frequency of those successors could have hindered, and indeed did hinder, the King of Bohemia, the clergy, and the people from requesting the solemn canonization of Agnes. This opinion is confirmed by the following words of the same letter: "To whom the Lord has granted such grace and virtue for the praise of her commendable life (Agnes), that she shone forth with such a clarity of miracles, both in life and in death, and after death, that the signs of her sanctity are evident and are daily manifest." Let each one consider for himself whether these words mean that the sanctity of Agnes was hidden. And what of the fact that the same letter openly indicates that Agnes is held by the people of Prague as a heavenly patron? For we read: "But because the immensity of divine generosity does not set a limit to the measure of its beneficence, nor does the gift once bestowed cause disgust to it, to those to whom the Lord has given fathers and patrons (understand, saints) in the same kingdom, He has also given the virgin, innocent and

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pure, and Agnes, by the appellation of her name, who is the daughter of the blessed memory of Lord Premislav or Ottokar, formerly King of Bohemia, etc." How, then, could that light, according to this letter, have been hidden? And yet, it was clearly shining.

[*Latin ed. p. 419*]

DECREE 419 viiiaex: "It is asserted that this document is greatly detrimental to the cause under consideration. Furthermore, it is false that, after that suppliant letter, a proper judicial inquiry was held to obtain the canonization of Agnes, but only that, at the command of Elizabeth, the deeds and miracles were described, as evidenced by the Bollandists. Indeed, the words of the Bollandists are: 'In order that the aforementioned supplication might have a happy outcome, it appears that, at the command of Queen Elizabeth, the most illustrious deeds and miracles were sought out, and a life of the Blessed Agnes was compiled from them.' But even if the process was initiated, what follows from this? It is lost. Can this be detrimental to the proof of the cult, which is confirmed by other documents? Regarding 4. Did Charles IV, the Emperor, discuss the canonization of Agnes with the Holy Father? It could indeed be denied, and conversely, it could be affirmed that Charles IV ordered his son, Wenceslaus, to work for it; and this is asserted by the authority of Pisani (in Bollandus), who died in the year 1401, and who wrote that the Emperor Charles IV (who died in the year 1378) had twice saved Bohemia from the jaws of death through the intercession of Agnes, and had ordered his son, King Wenceslaus, to exert all his efforts for her canonization; who, being occupied with other matters and hindered, did not fulfill his will. But suppose that both Charles and Wenceslaus worked for the canonization of Agnes. What does this imply against the cult? Does not the Censor know best how much is necessary to obtain canonization, even if the public cult already exists, and an apostolic decree has been issued concerning it? For this reason, one could not be surprised, nor derive any difficulty against the proof of the cult, from the fact that canonization has not yet been decreed, when there are many causes of the Blessed whose cult is established, and yet the decree of canonization has not yet been issued. And if the Supreme Pontiff, even under such compelling prayers, should nevertheless decide to do nothing, the reason would be that the Postulator was lacking, who would take care of holding the necessary inquiries. Furthermore, concerning this historical difficulty, one should certainly hear the opinion of Anthony Friud in his Ecclesiastical History of Bohemia.

[*Latin ed. p. 420*]

420. DECREE: If the censor applies diligence in asserting that the process begun in the year 1436, which declared the relics of Agnes to have been discovered in the year 1450, was invalidated, he must also

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apply diligence in writing the following: "They marveled at the devout princess, who was called by the very Saint Clara, the 'half of the soul,' still exerting her influence. This became even more evident after her death, so that in a short time both the Church and the Monastery received the name of Saint Agnes. This common faith in the intercession of the Blessed One moved Queen Elizabeth in the year 1328, so that, with the consent of Bishop John, she requested the canonization of her at the hands of Pope John XXII. Even Charles IV pursued this undertaking, strongly recommending it, and, as death approached, he urged his son to complete it. But Emperor Wenceslaus IV soon forgot his father's desire; finally, the Hussite disturbances overturned everything. Nevertheless, the entire Order of the Cross received papal permission to celebrate the Feast of the Blessed Agnes every year on the second of March, according to the rite of the first class."

What, then, does the esteemed censor say? "Indeed, due to the prevailing Hussite disturbances, the cult of Agnes had fallen into oblivion for many. However, it was not extinguished. And how," the Vindicator asks, "could the cult of Agnes shine forth in that place amidst the ruins and evils of that age, when the cult of other Saints was diminished?" "I say," he continues, "that at that time and in that place, many monuments of piety, churches, monasteries, images, statues, and relics of Saints were being destroyed. And yet, the cult of Agnes was not extinguished, as that very person affirms, who said that it had been diminished. Nevertheless, when the storm of the Hussite disturbances subsided, it regained new growth, and, as testified by writers and historical monuments, it was not only preserved, but was handed down to our time as a prominent example of piety for the faithful of Bohemia. Indeed, even in that very age, an image of Agnes was depicted with a halo."

[*Latin ed. p. 421*]

Section II, page 421: For this reason, the cult of Agnes was certainly diminished by force, the clamor of arms, and ruins, and not by the deletion of her memory and devotion from the hearts of the faithful. However, violent events cannot be the cause of the diminution of the cult, and furthermore, that number of years, one hundred, which is sufficient to establish something as memorable, had not yet elapsed in our case. To the contrary, this Censor affirms that this oblivion, or interruption of the cult, lasted until the year 1643, in which year the relics of Agnes were sought after by Cardinal de Harrach. Indeed, the Censor has forgotten that depicted panel from the 15th century which was kept in the Oratory of the Order of the Crucifers, and which is still kept there. He has forgotten the feast which was celebrated in honor of Blessed Agnes, already in the 14th century. He has forgotten that, in the historical calendar published in Prague in 1578, Daniel Weleslawinus called Agnes "Blessed Agnes" when he wrote: "In

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that year, 1281, Blessed Agnes, daughter of Premislai Ottokar I, died." He has also forgotten what the witness U. reported, that in the Franciscan Martyrology published in Paris in 1638, there existed a biography of the Blessed Agnes. These things, truly, signify nothing other than that the cult of Agnes has diminished. Moreover, it should be noted that, from the year 1420, when the tempest of Hus raged, to the year 1643, when the relics of Agnes were sought, there are not 350 years, as the esteemed Censor claims, but 223 years. To the 7th point: It should be noted that there were two investigations conducted; one ordered by Cardinal de Harrach, the other ordered by Ferdinand III, whose authority the esteemed Censor relies upon in this matter. In the first of these investigations, the body of a certain saint was found, as evidenced by a cross and a pallium which the saints used, and it emitted a wonderful fragrance. John Tanncrus wrote to Bollandus that he had seen something of the bones of that body, and that he had perceived a fragrance, and that he believed those bones to be those of the Blessed Agnes. The same was testified by D. Tavornicus, who was then the Archdiocesan Chancellor. However, since there were no certain proofs, and since, due to the previous devastation of the monastery and the tombs, a doubt could reasonably arise, the Cardinal ordered that the bones be placed in a chest and kept in the sacristy, so that further investigation might be made.

[*Latin ed. p. 422*]

422 DECREE: Concerning the second investigation ordered by Ferdinand III, regarding which Censor states: "Another body was subsequently found there, and it is not necessary for us to discuss this, as it does not pertain to our matter." However, Censor asserts that the cult of Agnes was brought to its ultimate end because of this discovery. On the contrary, Bollandus writes: "Meanwhile, the devotion of the people of Pragensis towards Blessed Agnes was increased, which was also confirmed by certain miracles." This is not a matter of disagreement. Furthermore, Bollandus states that it was not merely devotion that was increased, but *greater* devotion. Therefore, the devotion of the people towards Agnes already existed. Moreover, not only did it exist, but the location of her tomb was already known, contrary to what Censor asserts; for Bollandus recounts that one of the miracles occurred in the year 1642, and another before the aforementioned discovery, in a single year. And this led to a certain request from the monastery, which sought that the relics of Blessed Agnes be transferred to that place, and indeed, they were transferred there. Therefore, it is entirely false that Censor affirmed that the cult of the Handmaid of God was brought to its ultimate end because of a serious doubt that arose concerning the person to whom, at one time, the same cult was perhaps transferred to that place.

8. What, however, about the time that followed, up to our own age?

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Censor exclaims. And he complains that the arguments concerning the cult are of little importance, and that there is no trace of any cult now in that place, except for a stone statue above the door of the demolished monastery, made in the year 1703, with the inscription "S. Agnes." This is what is given. Is this not enough? That monastery was devastated during the Hussite times, and later, during the time of Joseph II, it was partly demolished, partly transformed, and converted to profane uses. The statue of St. Agnes, placed above the door in the year 1703, and although it is entirely different from the monastery, does not the very name "Monastery of St. Agnes" not indicate the most evident sign of the cult of Agnes that had been practiced in that place long ago? I do not know if a more valid argument can be presented concerning the existence of a prior cult.

Furthermore, Benedict XIV teaches that the discovery of a second body is one of the arguments for the cult, but not the only one. He writes in *b. IL, Cap. 23, N. 1*: "When witnesses are lacking..."

[*Latin ed. p. 423*]

DECIMUM 4 2 3 > (a cult which, from time immemorial), is a place for > proof through authentic documents... In the matter at hand, the authentic documents are first the > histories written by men worthy of faith, who composed them one hundred years before the Constitution Urban, or who > published their works during the same century, and this > not only if they speak of the cult of the Servant of God, but > even if they merely recount her virtues and miracles, calling her the Blessed or Saint. How many writers are there who call Agnes the Blessed or Saint? To 9. Even if the objections raised by the esteemed defender of the faith regarding the non-existence of a shrine were true, we would not be moved; for it is sufficient for the proof of Agnes' cult that it is demonstrated that the Order of the Cross has, since the 14th century, celebrated her feast with solemn rites, and that it venerates an image of her painted in the 15th century in its shrine, and that it observes a fast on the days preceding the feast of Agnes, and that, as other things might be omitted, according to Anthony Frind, papal permission was granted to celebrate the feast of the Blessed Agnes with the rites of the first class. But these things being overlooked, the existence of the sacred shrine cannot be doubted. Indeed, the Prior of the Order of the Cross, George Ignatius Pospuchal, who at the end of the 17th century erected a new hospital under the patronage of the Blessed Agnes on the banks of the Moldava, was buried, as is read in the inscription, under her delineated image, in the Chapel of the Blessed Agnes of the Church of his Order. This is also confirmed by the Acts of the visitation of the Church of the Cross, in which we read: "In the same Church, by the great Master of the Cross, > George Pospichal, in the second half of the 17th century, > there is a Chapel today of the Blessed Virgin, formerly of St. Valentine, > and formerly, as tradition says, called of the

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Blessed Agnes. > In this Chapel is buried the aforementioned founder of the Church, > whose image is well preserved in the very Convent, > and whose inscription contains the following words: "Vicje> sin. on the sixth of August 1699 in the Chapel of the Blessed Agnes of the Church > and of his Order, which he himself had lavishly erected in honor of St. Francis."

[*Latin ed. p. 424*]

424. It has been declared that Privas was a private place, when the witnesses say: "Does a chapel or oratory with images of the Blessed Agnes exist within the buildings of our Convent?" And when, in the report of experts, we read: "In the main altar of the conventual chapel of the Monastery of the Crossbearers, an image is found dating from the beginning of the preceding century." Can Privas, therefore, be considered a place where such veneration is practiced? Can these images, exposed for private veneration, be said to constitute a private cult? Is a private cult that which is rendered by a public and illustrious Order through the recitation of the Office, through the solemn celebration of the feast, through fasting on the eve of the feast, and with the approval of the Supreme Pontiff, according to a decree? Finally, can the cult of Agnes be considered public, perhaps solely because of the oratory, or solely because of the images, and is it thereby proven? To the 10th question, the answer is derived from what has been said. Wherefore, etc.

[*Latin ed. p. 425*]

425. ROMA. The Liturgical Academy, established in the City, desiring to address the abuse which had begun to spread more widely, sought a ruling regarding the use of chalices, the cups of which are made of metal, in the holy sacrifice of the Mass. The Sacred Roman Congregation, in the following, humbly sought a solution to the doubts, namely:

Doubt I. Can chalices be made for the holy sacrifice of the Mass, the cups of which are made of metal, whether gold, silver, or copper?

Doubt II. Can such cups, even if gilded, be lawfully consecrated by a Bishop?

Doubt III. Is it permissible for churches, which already possess these chalices, to continue their use?

To these three doubts, another was added in order to determine what should be considered regarding the use of metal plates, which are used by some in dioceses, when the Holy Synaxis is offered to the faithful.

Doubt IV. Is it permissible to use metal plates instead of patens when administering the sacred Communion to the faithful, or can such use be tolerated in those dioceses in which it has been introduced?

The same Sacred Congregation desired that its opinion on the aforementioned doubts be first presented by one of its theological consultants and another of the Masters of the Apostolic Ceremonies. When the written

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opinions were submitted, the Cardinal Prefect, having signed them with his name and the seal of Oslo, and having been appointed for this cause, proceeded to...

[*Latin ed. p. 426*]

426 - In ROMA, postquam praedicta quattuor dubia ad Ordinarios Sacrorum Rituum Comitia ad Vaticanum, die infrascripta, habita fuerunt, Emi et Rmi Patres, sacris tuendis Ritibus praepositi, post accuratum omnium examen, rescribendum censuerunt. Ad I: Serventur Rubricae. Ad II: Provisum in primo, Ad III: Abusum esse interdicendum; congruo tamen assignato tempore ut de aliis Calicibus provideantur. Ad IV: Non esse interdicendum; nihilominus significetur Rmo D. Episcopo Alexandriae non esse improbandum usum Tobalearum linearum. Atque ita decreverunt, ac servari mandarunt. Die 20 Martii 1875.

[*Latin ed. p. 427*]

427 FROM THE HOLY CONGREGATION FOR THE PROPAGATION OF THE FAITH: INDULGENCE GRANTED FOR THE JUBILEE. In favor of the faithful residing in mission territories. From an audience granted by the Most Holy Father on January 24, 1875. Since in many places of heretics and infidels there are no churches, and in others there are not enough, as has been recently published by the Most Holy Lord Pope Pius IX, by his Apostolic Letters of the eighth day of January of the past year, whereby it is necessary for the faithful residing outside the city to visit certain churches in order to obtain the Jubilee, and since it can also happen that, for various reasons, the prescribed visits to the churches cannot be carried out; many faithful in those places would be forced to lack this most useful and deserved treasure of the Jubilee, unless they are assisted by Apostolic authority. Considering this, the same Most Holy Father, at the suggestion of the undersigned Secretary of the Holy Congregation for the Propagation of the Faith, out of his benevolence, has granted to the Patriarchs, Archbishops, Bishops, Apostolic Vicars, and Superiors of all missions, the faculty, which they can also delegate to simple missionaries, of extending, where necessity demands it, even by two years, the time for obtaining the Jubilee, and also of dispensing with the aforementioned faithful regarding the number of churches to be visited and the visits to be made in them; indeed, even, when it is necessary, of substituting such works with a fast, or with the recitation of certain pious prayers, always maintaining the devotion for children who have not yet attained the age of reason.

[*Latin ed. p. 428*]

428 INDULGENCE GRANTED: Those admitted to Holy Communion are granted this indulgence, subject to the sacramental Confession, and for adults, also the Communion; and furthermore, concerning all, for the prosperity and exaltation of the Holy Church and the Apostolic See, for

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the extirpation of heresies, and for the conversion of all the erring, for the peace and unity of the entire Christian people, and according to the mind of His Holiness. Given in Rome, from the offices of the aforementioned Holy Congregation of Propaganda Fide, on the day and year mentioned above. IOANNES SIMEONI, Secretary. N.B. The Holy Penitentiary, on the occasion of this same Jubilee, under date of January 25, 1875, by Apostolic authority, declared among other things: 1. His Holiness grants that, during this same Jubilee, the faithful who are properly disposed may also be absolved from the sin of heresy; however, with the firm obligation of abjuring errors or heresy, of repairing scandals, etc., as is required by law. 2. It is declared that, by virtue of this present Jubilee, one may be absolved only once from censures and reserved cases, and likewise, the Indulgence of this Jubilee itself may be obtained only once; however, the Indulgences granted and expressly not suspended or revoked by the Holy See remain in full force. 3. It is further declared that a single Confession and Communion cannot satisfy the Paschal precept, and simultaneously obtain the Jubilee. 4. It is not possible to absolve confessors who have dared to absolve accomplices.

[*Latin ed. p. 429*]

429 APOSTOLIC LETTERS. We do not doubt that this *Ephemeris* will be useful and pleasing to its readers, if we present to them the Letters of the Most Holy Pope Pius IX, which, by divine Providence, were published some years ago. They have been deemed suitable for these times, and will be of great benefit both to Catholic philosophers and to theologians. Therefore, we have considered it worthwhile to strive, as far as we can, to make their knowledge widely known. For through them, it becomes clear to all the safe and secure path that the Holy See of Rome, a diligent defender and teacher of truth, has deigned to show us, concerning the study of philosophy, so that false or erroneous opinions of some philosophers may not deceive the unwary; who, having not been sufficiently instructed, believe that human reason is able to understand everything by itself, even those things that pertain to faith; and therefore, that philosophy should entirely exclude Divine Revelation. The Apostolic Letters are of the following tenor:

PIUS P. IX. TO THE VENERABLE BROTHER GREGORY, ARCHBISHOP OF MUNICH AND FRIZING.

VENERABLE BROTHER, GREETINGS AND APOSTOLIC BENEDICTION.

Among the many bitter hardships with which we are beset on all sides in this time of great turmoil and injustice, we are deeply grieved to learn that in various regions of Germany, there are some Catholics, even men, who, while teaching Sacred Theology and Philosophy, do not hesitate to

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introduce, and to spread publicly and openly, new and entirely reprehensible opinions, claiming a certain freedom in teaching and writing within the Church.

[*Latin ed. p. 430*]

430 We have received, Venerable Brother, Apostolic Letters, in which we were informed that the Reverend Father James Frohschammer has been granted a license by this Munich Academy of Philosophy to teach and write, and that his works are being published, defending most pernicious errors. Therefore, without delay, we instructed the Congregation entrusted with the examination of books to carefully and diligently examine all the volumes bearing the name of this same Father Frohschammer, and to report everything to us. These volumes, written in German, are entitled "Introduction to Philosophy," "On the Freedom of Science," and "Athenaeum," the first of which was published in 1858, the second in 1861, and the third in this year, 1862, by the Munich printers. Consequently, this same Congregation, diligently obeying our instructions, conducted a most thorough examination, and, after serious and mature discussions and deliberations, judged that the author held many views that were not correct, and that his doctrine deviated from Catholic truth. This was especially evident in two respects: first, because the author attributes powers to human reason that are entirely foreign to reason itself; and second, because he grants to reason the freedom to think and say whatever it pleases, thereby completely undermining the laws, the office, and the authority of the Church. For, in the first place, the author teaches that philosophy, if rightly understood, can not only perceive and understand those Christian dogmas that natural reason has in common with faith (as, indeed, common perceptions have a common object), but also those dogmas that most properly and essentially constitute the Christian religion, namely, the supernatural end of man and all that pertains to it, and the most sacred mystery of the Incarnation of the Lord, and that reason, given this object, can, knowingly and according to its own principles, arrive at these things. Although the author does introduce some distinction between these and those dogmas, and attributes a lesser degree of authority to the latter, he clearly and openly teaches that even these latter are included among those things that belong to true and proper science or philosophy.

[*Latin ed. p. 431*]

APOSTOLIC LETTERS 431 constitute the subject matter. Therefore, according to the opinion of the same author, it can and should be concluded that, for the sake of the most hidden and innermost mysteries of Divine Wisdom and goodness, indeed even of its free will, even if the object of revelation is presupposed, reason, not already from the principle of divine authority, but from its own natural principles and powers, can arrive at

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knowledge or certainty. This doctrine of the author, as anyone who is even slightly imbued with the rudiments of Christian doctrine does not immediately see and clearly feel, is false and erroneous. For if these cultivators of philosophy were to defend the principles and laws of true reason and philosophical discipline, they would certainly deserve due praise. Indeed, the most noble place of true philosophy is to diligently seek the truth, and to cultivate human reason, although darkened by the fault of the first man, in no way extinguished, rightly and diligently, to illuminate it, and to perceive, understand, and promote its object, and to demonstrate, defend, and vindicate many truths, such as the existence of God, His nature, and His attributes, which faith also proposes to be believed, through arguments derived from its own principles, and thus to prepare the way for holding these dogmas of faith more correctly, and for those even more hidden dogmas, which can first be grasped only by faith, so that they may somehow be understood by reason. This is what the severe and beautiful science of true philosophy ought to do, and in which it ought to engage. If learned men in the academies of Germany strive for the cultivation of these more rigorous and serious disciplines, due to the particular inclination of that renowned nation, their efforts are approved and commended by us, as they contribute to the benefit of sacred things and to what they have found useful for their own purposes. But in this very undertaking, we can never tolerate that everything be mixed up recklessly, and that reason occupy and disturb even those things that pertain to faith, since the limits beyond which reason can never rightfully progress, or can progress, are certainly known to all. And to these dogmas, all things most clearly and openly pertain.

[*Latin ed. p. 432*]

These are APOSTOLIC LETTERS which concern the supernatural elevation of man, and his supernatural relationship with God, and are known through revelations made for this very purpose. And indeed, since these dogmas are above nature, they cannot be reached by natural reason, nor by natural principles. It is never the case that reason, with its natural principles, can adequately treat such dogmas. And if these men dare to assert this rashly, let them know that they are certainly departing not from the opinion of some Doctors, but from the common and never-changing doctrine of the Church. For from the divine LETTERS and the tradition of the Saints, it is clear that the existence of God, and other truths, are known by the light of natural reason, even by those who have not yet embraced the faith; but that those more hidden dogmas were revealed only by God, when He willed to make known a mystery which was hidden from ages and generations. And this was done in such a way that, after having spoken in many ways and in many instances to the fathers through the prophets, He finally spoke to us in His Son, through whom He made the ages (2). For no one has ever seen God. The only-begotten Son, who is in the bosom of the

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Father, has declared Him (3). Therefore, the Apostle, who testifies that the Gentiles have come to know God through the things that have been made (4), speaking of the grace and truth which are through Jesus Christ, says: "We speak God's wisdom in a mystery, which none of the princes of this world have known. But to us God has revealed these things through His Spirit. For the Spirit searches all things, even the depths of God. For who knows the mind of man, but the spirit of man who is in him? Even so, no one has known the things of God except the Spirit of God" (5). Adhering to these and many other divine sayings, the Holy Fathers diligently took care to distinguish in the Church's teaching the notion of divine things, which is common to all through the power of natural intelligence, from the knowledge of those same things which are received through faith by the Holy Spirit, and constantly (1) Col. 1. 26. (2) Heb. i. 12. (3) John 1. 1. (4) John 1. (5) 1 Cor. ii. 10-11.

[*Latin ed. p. 433*]

APOSTOLIC LETTERS 433 have taught that, through me, mysteries are revealed to us in Christ, which surpass not only human philosophy, but even angelic natural intelligence; and although these things are made known through divine revelation and are accepted through faith, they nevertheless remain veiled by the sacred veil of faith itself and shrouded in obscurity, as long as we are pilgrims in this mortal life (1). From all of this, it is clear that the opinion held by Frohschammer is entirely foreign to the doctrine of the Catholic Church, which he does not hesitate to assert: that all the dogmas of the Christian religion are the object of natural science, or philosophy, and that human reason, historically cultivated, can, if these dogmas are presented to it as an object, attain knowledge of all things, even the most hidden, through its own natural powers and principles. Now, in the aforementioned writings of the same author, another opinion prevails, which is entirely contrary to the doctrine and sentiment of the Catholic Church. For he attributes to philosophy a freedom that is not the freedom of science, but rather a license that must be utterly condemned and rejected. Indeed, by making a distinction between the philosopher and philosophy, he grants the philosopher the right and duty of submitting to the authority that he himself deems true, but he denies both to philosophy, asserting that it should never, and indeed cannot, submit to authority, without any consideration of revealed doctrine. This would be tolerable, and perhaps even admissible, if this were said only of the right that philosophy has to use its principles, or its method, and its conclusions, as do other sciences, and if its freedom consists in exercising this right, so that it admits nothing that has not been acquired by itself or is foreign to itself. But this, according to his own writings on philosophy, must know and experience its own limits. For it will never be permissible, either to the philosopher or to philosophy itself, to...

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(1) St. John Chrysostom, Homily 7 (9) on 1 Corinthians; St. Augustine, *De Fide ad Gral.*, 1, 10; St. Leo, *Sermon* 9 *De Civitate Dei*; St. Cyril of Alexandria, *Contra Nestorem*, Book 3, beginning; John 1:9; St. John Damascene, *De Fide Orthodoxa*, Oration II, 1, 2, on 1 Corinthians, chapter 2; St. Jerome, *Epistola* 3, on Galatians 3:2.

[*Latin ed. p. 434*]

434. It is contrary to the spirit of the Apostolic letter to say anything contrary to what divine revelation teaches, or to call anything from those same teachings into doubt, because of which [one] does not understand, or does not accept, the judgment that the authority of the Church has decided to pronounce on some conclusion of philosophy, which until now had been free. Furthermore, the same author vigorously and rashly defends the freedom of philosophy, or rather, its unrestrained license, so much so that he does not at all fear to assert that the Church should never pay any attention to philosophy, but should even tolerate the errors of philosophy itself, and leave it to correct itself; from which it follows that philosophers must necessarily participate in this freedom of philosophy, and thus are also freed from all law. Does not everyone see how vehemently such a sentiment and doctrine of Frohschammer must be rejected, condemned, and utterly damned? For the Church, by its divine institution, must diligently guard the integrity of the deposit of divine faith, and with the greatest care must constantly watch over the salvation of souls, and with the utmost diligence must remove and eliminate all that may either oppose the faith, or in any way endanger the salvation of souls. Therefore, the Church, by the power entrusted to it by its divine Author, not only has the right, but especially the duty, not to tolerate, but to proscribe and condemn all errors, if the integrity of the faith and the salvation of souls require it, and it is the duty of every philosopher who wishes to be a son of the Church, and also of philosophy itself, never to say anything contrary to what the Church teaches, and to retract those things about which the Church has warned them. We declare and pronounce that the sentiment which teaches the contrary is entirely erroneous, and most injurious to the faith of the Church and to its authority. After carefully considering all of these things, with the counsel of the distinguished books of the Cardinals of the Congregation, and by our own initiative and with certain knowledge, after mature deliberation, and by the fullness of our Apostolic power, we declare that the aforementioned books of the Reverend Father Frohschammer contain propositions and doctrines that are, with respect to the Church, its authority, and its rights, false, erroneous, and injurious.

[*Latin ed. p. 435*]

APOSTOLIC LETTERS 45: We condemn, we denounce, and we wish to be understood by all as condemning those [individuals], and we command

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the aforementioned Congregation to include these books in the Index of Prohibited Books. While signifying this to you, Venerable Brother, we cannot but express the great sorrow of Our heart, as we see this son, the author of those very books, who otherwise could have deserved well of the Church, tragically led astray by a certain impulse of the heart, and increasingly deviating from the right path. For when one of his books, concerning the soul, had previously been condemned, not only did he not humble himself, but he did not fear to repeat the same error in other books as well, and to heap insults upon Our Congregation, and to utter many other things rashly and falsely concerning the manner in which the Church acts. All of these things are such that we could rightly and justly be indignant about them. But we do not wish to yet lay aside the bowels of Our paternal charity towards him, and therefore we urge you, Venerable Brother, to wish to manifest to him Our paternal heart, and the most grievous sorrow of which he is the cause, and at the same time to exhort and warn him with salutary admonitions, that he may hear the voice of Our Father, which is common to all, and that he may come to his senses, as befits a son of the Catholic Church, and thus gladden us all, and finally, that he himself may happily experience how pleasant it is not to enjoy a vain and pernicious liberty, but to adhere to the Lord, whose yoke is sweet, and whose burden is light, whose words are tried by fire, whose judgments are true, justified in Himself, and whose entire way is mercy and truth. We also gladly take this opportunity to once again testify and confirm Our special benevolence towards you. And we wish this to be a pledge of the Apostolic Benediction, which with the deepest affection of Our heart We impart to you, Venerable Brother, and to the flock entrusted to your care. Given at Rome, near St. Peter, on the 11th of December, in the year 1862, in the seventeenth year of Our Pontificate.

[*Latin ed. p. 436*]

456 LETTER TO THE VENERABLE BROTHER GREGORY, ARCHBISHOP OF MUNICH AND KRISINGEN. PIUS IX, POPE. To our Venerable Brother, greetings and the Apostolic Blessing. We have gladly received your letter, dated the 7th of the past month of October, in which you inform Us of a gathering held in the city of Munich last month of September, by certain theologians and learned Catholic men of Germany, concerning various matters pertaining especially to theological and philosophical disciplines. From letters written by Our Venerable Brother Matthew, Archbishop of Neo-Caesarea, and Our Apostolic Nuncio at this Royal Court, as We instructed, you could easily have learned, Venerable Brother, with what sentiments We were affected when We first received news of this proposed gathering, and after We learned how the aforementioned theologians and men were invited to and assembled for such a gathering. Certainly, We did not doubt the laudable purpose

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for which the authors and supporters of this gathering were motivated, namely, that all outstanding Catholic men, through mutual counsel and united efforts, would promote the Catholic science of Germany, and defend it from the nefarious and most harmful opinions and endeavors of its adversaries. But in this exalted Chair of the Prince of the Apostles, even though We are immersed in the most difficult of times, in which the authority of the sacred pastors is, if ever, most necessary for preserving the unity and integrity of the Catholic doctrine, and must be guarded by all, We could not but greatly marvel that the invitation to the aforementioned gathering was made and promulgated privately, without any regard for the influence, authority, and mission of ecclesiastical power, which by its own and natural right alone is entitled to oversee and direct, especially, matters of theology.

[*Latin ed. p. 437*]

Apostolic Letters 437 concerning doctrine. This matter, as you well know, is entirely new and quite unprecedented in the Church. And therefore, we wished that you, Venerable Brother, should be aware of our sentiments, so that, both by you and by other Venerable Brothers, the superiors of the Sacred places in Germany, the purpose stated in the program of the Convention could be thoroughly examined, if indeed it were such that it would bring true benefit to the Church. At the same time, we were certain that you, Venerable Brother, through your pastoral concern and zeal, would apply all your counsel and efforts, so that in the same Convention, both the integrity of the Catholic faith and doctrine, and obedience, which all Catholics of every class and condition are absolutely obligated to render to the authority and teaching of the Church, would suffer no detriment whatsoever. And we cannot conceal that we were deeply concerned, since we feared that such a Convention, held without ecclesiastical authority, might provide an example of gradually encroaching upon something of the ecclesiastical order and the authentic magisterium, which, by divine institution, belongs properly to the Roman Pontiff, and to Bishops in union and communion with the Successor of St. Peter. And thus, the ecclesiastical order disturbed, the unity and obedience of faith might, at times, be weakened among some. And we were already fearing that in the very Convention, certain opinions and views might be enumerated and held, which, especially when disseminated among the people, would endanger the purity of Catholic doctrine and the due submission to it. With great sorrow of mind, Venerable Brother, we recall that in these recent times, this Apostolic See has been compelled, by the very office of its grave duty, to censure and prohibit the works of certain writers in Germany, who, not knowing that they were departing from some principle or method of false science, or of the deceptive philosophy of the present day, were, as we believe, led against their will to teach doctrines that differ from the true sense and interpretation of some

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of the most sacred dogmas of our Holy Faith, and which errors, already condemned by the Church, have been brought forth from the darkness, and which have explained the very nature and essence of divine revelation and faith in a completely alien sense.

[*Latin ed. p. 438*]

We knew, Venerable Brother, that some Catholics, who strive to cultivate knowledge through stricter disciplines, relying too much on the powers of human ingenuity, have not been deterred from the dangers of being misled, and from exceeding the limits that obedience due to the teaching authority of the Church does not permit, in order to preserve the integrity of the entire revealed truth, which has been divinely instituted. Consequently, such Catholics are miserably deceived, and often agree with those who clamor against and slander the decrees of this Apostolic See, and of Our Congregations, claiming that they impede the free progress of knowledge, and expose themselves to the danger of breaking the sacred bonds of obedience, by which they are bound to this Apostolic See, which was established by God Himself as the teacher of truth and its avenger. Nor were we unaware that, even in Germany, a false opinion had taken root against the ancient school, and against the doctrine of those most eminent Doctors, whom the universal Church venerates for their admirable wisdom and sanctity of life. This false opinion puts the authority of the Church itself at risk, since the Church has not only permitted, for many centuries, that knowledge be cultivated through the method of these same Doctors, and through the principles commonly approved by all Catholic schools, but has also frequently praised their theological doctrine, and has strongly recommended it as a most powerful bulwark of faith and a formidable weapon against its enemies. All these things concerned Us greatly, for the sake of the most serious duties of Our Apostolic ministry, and for the singular love with which We cherish all Catholics in Germany, the most beloved part of the flock of Dominic. And because of these anxieties, after receiving news from the aforementioned Assembly, We took care to inform you of the matters explained above. After We received the briefest of messages, reporting that you, Venerable Brother, having yielded to the prayers of the authors of this Assembly, had granted permission to hold the same Assembly, and had carried out the sacred ceremony with due solemnity, and that consultations had been held in that Assembly in accordance with the doctrine of the Catholic Church, and [the text is incomplete].

[*Latin ed. p. 439*]

The APOSTOLIC LETTERS which the members of the aforementioned assembly, through the same messenger, requested, we have, without delay, granted their pious requests, bestowing our Apostolic Benediction. Indeed, we awaited your Letters with great anxiety, Venerable Brother, so

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that we might, from you, learn most accurately all those matters which might pertain to the same assembly. Now, having received from you those things which we most desired to know, we hope that this matter, as you assert, with God's help, may contribute to the greater benefit of the Catholic Church in Germany. Indeed, as all the members of that assembly, as you write, have affirmed that the progress of the sciences, and a happy outcome in avoiding and refuting the most grievous errors of our age, entirely depend on a firm adherence to those truths revealed, which the Catholic Church teaches; they have known, and professed that truth, which true Catholics, devoted to the cultivation and development of sciences, have always esteemed and transmitted. And, grounded in this truth, they have been able, as wise and true Catholics, to cultivate and explain those same sciences safely, and to render them useful and certain. This, however, cannot be attained if the light of human reason, confined by its limits, does not venerate above all those truths which it can investigate with its own powers and abilities, lest it scorn, as is fitting, the infallible and uncreated light of the Divine intellect, which shines forth wonderfully in Christian revelation. For although those natural disciplines are based on principles known through their own reason, it is necessary that the followers of the Catholic Church have before their eyes the divine revelation as a guiding star, so that, with it shining before them, they may beware of errors and pitfalls, and that they may observe that in their investigations and recommendations, they can be led to those things which are more or less contrary to the infallible truth of things revealed by God. Hence, we do not doubt that the members of the aforementioned assembly, knowing and professing the aforementioned truth, at the very time, clearly rejected and reproved that recent and deplorable method of philosophizing, which, even if it admits the divine revelation as a historical fact, nevertheless rejects the ineffable truths proposed by that same divine revelation.

[*Latin ed. p. 440*]

I : 440 I i. Apostolic Letters are based on the investigations of human reason, as if the truths were subject to reason, or as if reason, with its own powers and principles, could attain understanding and knowledge of all the supernatural truths and mysteries of our most holy faith, which are so above human reason that it can never, by its own powers and from its own natural principles, understand or demonstrate them. We, however, praise these men for the reasons we deem to be, rightly, rejecting what appears to be a false distinction between the philosopher and philosophy, about which we have spoken in other Letters written to you, and for asserting that all Catholics, in their learned writings, ought to obey the decrees of the infallible Catholic Church from conscience. While we give them praise for professing the truth, to which Catholic teachers and writers are entirely bound, we limit them only to those things which are proposed by

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the infallible judgment of the Church, as if they were dogmas of faith to be believed by all. And we also believe that they did not intend to declare that perfect adherence to revealed truths, which they recognized as absolutely necessary to attain true progress in science and to avoid errors, can be achieved only if faith and obedience are given to dogmas expressly defined by the Church. For even if we are speaking of that submission which is due to divine faith, it is not limited to those things which have been defined by the express decrees of the ecumenical Councils, or of the Roman Pontiffs, or of this Apostolic See, but it must extend also to those things which are transmitted as divinely revealed by the ordinary teaching of the whole Church dispersed throughout the world, and which are therefore retained by Catholic theologians as pertaining to the faith, by universal and constant consent. But when we speak of that submission by which all Catholics are bound, who are engaged in contemplative sciences, so that they may bring new benefits to the Church with their writings, therefore, these men must recognize that it is not enough for wise Catholics to receive and venerate the aforementioned dogmas of the Church, but it is also necessary that they submit themselves to the decisions,

[*Latin ed. p. 441*]

APOSTOLIC LETTERS 44d, which concern matters of doctrine, are issued by the Pontifical Congregations. Then there are those doctrines, which are held by the common and constant consensus of Catholics, as theological truths and conclusions so certain, that opinions contrary to these same doctrines, although they may not be called heretical, nevertheless deserve theological censure. Therefore, we do not believe that those men who were present at the aforementioned assembly in Munich were able, or wished, to oppose the doctrine recently expounded, which is maintained in the Church based on the principles of true Theology; rather, we are confident that they will be supported by this, so that they themselves, in pursuing the most rigorous disciplines, will diligently conform themselves to the standard of the doctrine enunciated. This confidence of ours is especially based on the Letters which they sent to us through you, Venerable Brother. Indeed, in those same Letters, they profess, to our great consolation, that they never intended to impose their views on the assembly, nor to arrogate to themselves any authority whatsoever that belongs entirely to the Church, and at the same time they testify that they did not wish to leave the assembly until they had declared the utmost obedience, reverence, and filial piety with which they regard Us and this See of Peter, the center of Catholic unity. Since, therefore, they acknowledge our supreme authority, and that of this Apostolic See, and at the same time understand the most serious duty entrusted to Us by the Lord Christ Himself, of governing and directing the entire Church, and of feeding the entire flock with the pasture of salutary doctrine, and of vigilantly guarding against any detriment to

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the most holy faith and its doctrine, we cannot doubt that those who are engaged in pursuing, teaching, and defending sound doctrine, at the same time recognize that they must and religiously must observe the rules always preserved by the Church, and obey all decrees issued by Our supreme Pontifical authority concerning doctrine. We communicate all of this to you, and we earnestly hope that you will make it known to all those who were present at the aforementioned assembly, and, if we deem it appropriate, we will not omit to add other things. To you, and to the Venerable Brothers of Germany, who are Sacred Prelates.

[*Latin ed. p. 442*]

442 APOSTOLIC LETTERS on this matter will be sent, after We have understood Your opinion, and that of the same Prelates, regarding the suitability of such gatherings. We once again strongly urge Your pastoral concern and vigilance, so that, together with other Venerable Brothers, the Prelates of the Sacred Order in Germany, You may diligently devote all care and thought to defending and promoting sound doctrine. Furthermore, do not fail to impress upon all to diligently avoid all profane novelties, and to never allow themselves to be deceived by those who boast impudently of a false freedom of science, and not only of its true progress, but also of errors as if they were advancements. And with equal zeal and effort, do not cease to exhort all to devote the greatest care and diligence to true Christian and Catholic wisdom, and, as is fitting, to hold in the highest regard the true and solid advancements of knowledge, which, guided and instructed by the most holy and divine faith, have been cultivated in Catholic schools, and especially to cultivate theological disciplines according to the principles and constant doctrines, with which the wisest Doctors, having unanimously sought immortal glory for themselves, and the greatest benefit, utility, and splendor for the Church and for knowledge, have been united. In this way, and in this way alone, Catholic men will be able to excel in the pursuit of knowledge. With God's help, day by day, as far as it is permissible for men, we will come to know, develop, and explain the treasure of truths that God has placed in the works of nature and grace, so that, after man has noted these truths with the light of faith, and diligently conformed his life to them, he may, in the clarity of eternal glory, behold the ultimate truth, namely God, without any veil, and may most happily enjoy and rejoice in Him eternally. We gladly embrace this opportunity to once again testify to and confirm Our special love for You. We also wish this to be a pledge of the Apostolic Benediction, which We impart with heartfelt affection to You, Venerable Brother, and to the flock entrusted to Your care. Given in Rome, at St. Peter's, on the day z, in the year 1863, in

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the eighteenth year of Our Pontificate. Decrees.

[*Latin ed. p. 443*]

APOSTOLIC LETTERS TO THE VENERABLE BROTHER HENRY, BISHOP OF BRESLAU. PIUS IX, POPE.

Venerable Brother, Greetings and Apostolic Benediction.

We have received with no small sorrow the letters which you recently sent to Us, concerning the dissensions among Catholics arising from the philosophy of Anthony Gunther, and we have learned that, even after the Apostolic See has judged the works and teachings of this author to be unsatisfactory, these divisions have not yet been entirely extinguished; for it appears that, both elsewhere and in this very Breslau Academy, there are found among the teachers of sacred doctrine those who seem to retain and defend at least some of Gunther's tenets.

Among these is, indeed, the esteemed John B. Battzer, canon of the Church of Breslau, who, having presented to you a treatise in which he discusses the nature of man, and at his request, you sent the same treatise to Us, asking that we define what should be thought concerning the doctrine contained therein. And We, greatly praising your, Venerable Brother, zeal for the defense of Catholic doctrine, and having no greater concern for the discharge of our office than to safeguard the deposit of faith throughout the world, and to preserve unity of spirit among the faithful in the bond of peace, We have entrusted Battzer's writing to be discussed by some theologians of this learned city.

From trustworthy reports, it has been made known to Us that the same doctrine which is found in Gunther's books, and which, even before these prescriptions, was also defended by Battzer himself, is still maintained; and that nothing else is being done, except to demonstrate that this doctrine is in conformity with the written and transmitted Word of God, and that it is in no way contrary to those things which the holy Councils, especially the Eighth Ecumenical Council and the Council of Vienne under Clement V., have decreed, or which We ourselves indicated in Our letter to Our beloved son, Cardinal Priest, Archbishop of Cologne, Henry of Geissel, dated June 15, 1857, in which We said that man is so constituted of body and soul, that "the rational soul is truly and immediately a substance."

But We are not merely concerned with these words:

[*Latin ed. p. 444*]

44i We have declared in our Apostolic Letters that the doctrine concerning man is true, but we have also condemned this very Catholic doctrine, as Gunther has presented it. If Baitzer had understood this, he would have surely realized that the doctrine concerning man, which he claims to defend as being in accordance with ecclesiastical dogmas, is the same as that which we accuse of being erroneous in its judgment of Gunther's doctrine.

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Furthermore, it is noted that Baitzer, in that very book, having reduced all the controversy to the question of whether the principle of life is a separate entity from the rational soul, proceeded to such an excess of temerity that he argued, with many words, that the opposite opinion was heretical and should be considered as such. We cannot, indeed, strongly disapprove of this, considering that this opinion, which places the principle of life in man, namely the rational soul, from which the body also receives movement, life, and all sensation, is the most common and accepted one within the Church, and has been most highly praised by many doctors, and appears so closely connected with the dogma of the Church that it seems to be its legitimate and only true interpretation, and therefore cannot be denied without error in faith. Since we, V. F., write this to you from certain knowledge and with our own volition, we ardently desire, and indeed confidently hope, that the beloved son John Baitzer, and all others who, in any way, adhere to the opinions of Gunther that we have rejected, will show themselves obedient and submissive to this Church, which Christ the Lord willed to be the mother and teacher of all. We urge you, V. F., to follow the example of the Apostle, who, bringing every thought into captivity to the obedience of Christ, demand this full submission from those, especially, who teach others, by your authority; but grant permission to those who may perhaps refuse to listen, by the power that God has given you. Finally, we impart to you, V. F., and to your entire flock, the Apostolic Benediction with all the affection of our heart. Given at Rome, near St. Peter, on the twentieth day of April, in the year 1837, P. N., in the fourteenth year of our pontificate.

[*Latin ed. p. 445*]

LETTERS TO THE BELOVED SON, REVEREND LAURENTIUS, CARDINAL OF THE HOLY ROMAN CHURCH, ARCHBISHOP OF COLOGNE, FROM POPE PIUS.

We have observed with great pleasure, and it is indeed well known to Us, the outstanding care and solicitude with which you, beloved son, diligently safeguard the Catholic doctrine, as evidenced in the letters which you sent to Us on the sixteenth day of the past month of April, concerning the decree sanctioned by Our pontifical authority, and promulgated by Our Index Congregation on the eighth day of this month of January, by which the works of the beloved priest, Anthony Gunther, were condemned.

Indeed, in the discharge of Our apostolic ministry, we spare no cares and undertake no labors, so that the deposit of faith entrusted to Us by God may be preserved entire and inviolate. When We first received from several Most Reverend Fathers, dignitaries of the Sacred Orders of Germany, reports containing several books by Gunther, which they considered to be detrimental to the sincere truth of the Catholic faith, We, without delay, referred the matter to the aforementioned Congregation, so that it might thoroughly and diligently examine the works of Gunther, and then report

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everything to Us.

Now, since the aforementioned Congregation, having obeyed Our commands and diligently performed its duty, has applied all its care and effort to this very serious and important matter, and has spared no study in meticulously examining and weighing the doctrines of Gunther, it has discovered that several things in the books of Gunther are entirely reprehensible and deserving of condemnation, since they are most contrary to the doctrine of the Catholic Church.

Therefore, having considered all matters, the same Congregation has promulgated the decree which We have approved with Our supreme authority, and which is well known to you, by which the works of Gunther are prohibited and forbidden. This decree, sanctioned by Our authority, is recorded in the Acts of the Congregation, Volume VIII, page 92.

[*Latin ed. p. 446*]

It was entirely necessary that the APOSTOLIC LETTER should suffice to ensure that the entire question was completely resolved, and that all those who boast of the Catholic name should clearly and openly understand that they must entirely comply with it, and that the doctrine contained in the books of Gunther cannot be considered sincere, and that it is no longer permissible for anyone to defend or promote the doctrine transmitted in those books, or to read and retain those books without due authorization. Indeed, no one could be considered exempt from this duty of obedience and due observance, because in the same decree, either no specific propositions were mentioned, or no certain and established censure was applied. For the decree itself was sufficient to ensure that no one who considered himself to be in agreement with what We have approved should deviate in any way from it.

But they are greatly mistaken who believe that the cause of this general prohibition stems from the fact that the Congregation did not find any single sentences or precise opinions in the works of Gunther worthy of censure. Indeed, we know with deep sorrow that in those works, a thoroughly erroneous and pernicious system of rationalism, which has often been condemned by this Apostolic See, widely prevails; and we also know that in those books, among other things, there are many passages that deviate significantly from the Catholic faith and the sincere explanation of the unity of the divine substance in three distinct and eternal persons. We also know that the accounts given in those books are neither better nor more accurate regarding the sacrament of the Incarnated Word, and regarding the unity of the divine Word's person in two natures, the divine and the human. We know that those books damage the Catholic doctrine concerning man, who is freed by the body and soul in such a way that the soul, and that rational soul, is truly and immediately the form of the body. Nor are we unaware that those books teach and assert things that are com-

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pletely contrary to the Catholic doctrine concerning the supreme freedom of God, which is free from any necessity in the creation of things. And it is also highly reprehensible and to be condemned that in the books of Gunther, human reason and philosophy, which in matters of religion should not dominate but should be entirely subservient, are rashly attributed to a magisterial right, and therefore, everything that is most firm is disturbed.

[*Latin ed. p. 447*]

APOSTOLIC LETTERS 447, concerning the distinction between science and faith, and concerning the perpetual immutability of faith, which is always and remains the same, while human philosophy and disciplines are neither always consistent with themselves, nor are they immune from a multitude of errors. Furthermore, that the Holy Fathers are not treated with the reverence prescribed by the canons of the Councils, and that the most brilliant lights of the Church are not entirely spared from those who abstain from speaking of Catholic doctrines, which Our Predecessor, Pope Pius VI, solemnly condemned. We shall not pass over in silence the fact that in the writings of Gunther, the proper form of speech is violated in the most egregious manner, as if it were permissible to forget the words of the Apostle Paul (2 Timothy), or those which Augustine warned against with the greatest seriousness (De Catechresibus, Book X, chapter 23): "It is permissible for us to speak according to a certain rule, lest the license of words, even in those things which they signify, should give rise to an impious opinion." From all of this, you clearly see, beloved son, with what care and diligence both you and your Auxiliary Bishops should be vigilant, so that these Guntherian works are removed from those dioceses, and with what singular diligence you must be watchful: lest the doctrine contained in those same works, which has already been condemned, be ever in any way transmitted or defended, either in philosophical or theological disciplines, by anyone henceforth. Indeed, while we have judged and judge the works of Gunther to be worthy of condemnation, we cannot but inform you that the Reverend Father Anthony Gunther himself has greatly consoled us, when, in his most obedient letters written to Us on the 10th of February, he repeatedly and with the highest praise professed that nothing was more important to him than to always obey the supreme authority of Our Holy See and of this Apostolic See, and therefore he humbly submitted himself to the aforementioned decree concerning his works. This excellent example of Gunther has been imitated with equal joy by many beloved sons, doctors of theology, philosophy, ecclesiastical history, and canon law, in various schools of Germany and adherents of the Guntherian doctrine, who, in the letters they gave to Us, declared that they humbly submitted themselves to

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the aforementioned decree.

[*Latin ed. p. 448*]

From "Our Apostolic Letter," and nothing is more pleasing to us than to see the observance of pontifical rites, and the obedience of this holy See in your spirit. While we are exceedingly joyful in this matter, we further hope that all others who follow the doctrine of Gunther may, with the help of God, strive to emulate the docility of spirit and the due obedience to the author himself, and to submit to our teaching, so that they may increase the glory of the author, and fill and augment our joy. You have, beloved son, what we deemed necessary to write to you on this subject; and we gladly seize this opportunity to once again demonstrate and confirm the special affection with which we embrace you in the Lord. We also wish this to be the surest pledge of our apostolic blessing, which, with all the affection of our heart, we impart to you, beloved son, and to the flock entrusted to your care. Given in Bologna on the 15th day of June, in the year 1857, in the eleventh year of our pontificate.

[*Latin ed. p. 449*]

U.) FROM THE HOLY CONGREGATION OF COUNCIL AND VACANCIES, from the Choir, dated December 20, 1862. The Chapter of the illustrious collegiate Church of Saint Mary Major, located in the diocese of B., in a letter dated March 21 of the year 1862, presented to the Most Holy Pope, that, while the Canons have, from ancient times, alternated in the choral service, the most pious Priest Ignatius Q., in his will of November 28, 1762, bequeathed a certain property to the same Chapter, with the stipulation that the fruits of said property should be divided equally among those, whether Dignitaries or Canons, who were present in the Choir at the time, so that they might, by reason of the alternation, be excused from attending. It is evident that this was ordained so that more Canons might be attracted by the hope of temporal gain, during the time of the vacation, to offer divine praises to God. The Chapter diligently adhered to the laudable will of the testator until the year 1862; but in that year, both due to lost funds and to increased taxes, with diminished revenues for providing for the daily service of the Choir, the fruits of the bequeathed property constituted the principal provision for the proper canonical support. Consequently, the Chapter petitioned the Most Holy Father to deign to grant to the Dignitaries and Canons, either perpetually, or at least until the Archiepiscopal Church of B. was erected, three vacation days per week, during which they should be present in the Choir, according to the mind of the testator Q.; and in the meantime, to enjoy the distributions.

[*Latin ed. p. 450*]

450. Regarding Vacations from the Choir: Having been asked by the Archbishop, after hearing the matter discussed in the Chapter, to report

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on the annual income and expenses of each Prebend, and also to explain the nature of the choral service and the reasons for the reduction in the annual income of the Chapter, and to express his opinion on the requests made, he responded as follows:

1. The annual income of each Prebend, after deducting the expenses of the Masses, amounts to approximately 170 florins.

2. The daily distributions amount to approximately 90 florins.

3. The choral service is an alternative service, except on feast days, on which all Canons are obliged to attend the sacred functions. These consist of the divine offices, either with singing or with readings, according to the solemnity of the day; and the singing of the Mass.

4. The annual income from the endowment bequeathed by the pious testator amounts to approximately 8211.50 florins, which, like the daily distributions, is received only by those who participate in the choir.

5. The Collegiate Church has lost much of its annual income in the past, which was also earned by those present in the choir, although the exact amount cannot be determined.

6. Due to increased taxes, the annual income has been reduced by approximately one-fifth. Finally, the Bishop requested prayers for the Holy See.

These matters having been presented, and in addition to the petition of the Canons, the Chapter requested that the Tridentine Council be invoked, which, in Session XXIV, chapter 12, grants all Canons, both of Cathedrals and Collegiate Churches, quarterly vacations, to alleviate human weakness and infirmity, as noted by the Holy Congregation of the Council in Alexandria, in the Decree concerning the Choral Service, March 20, 1790, § 3. And indeed, the Canons of the Collegiate Church of B. [Fondi], if they were to lose the income from the endowment, would scarcely receive a small profit, including the distributions, of approximately 256 florins, according to the report of the Ordinary, and are already in such a deplorable condition that they are forced, to their great detriment, to attend the choir daily, and almost without any...

[*Latin ed. p. 451*]

VACATIONUM A CHORO 451: Canons are obligated to request leave from the choir, lest they lose the principal income derived from the endowed fund, or, if they wish to rest for a time due to human weakness, they lose what is necessary for their honest support. However, there are examples of leave granted from daily choral service for a certain time due to a very serious obligation; as was granted for two months in Atrien, 19 December 1722, and in Segni, 17 February 1838. A residence lasting the entire year, however, appears to be excessive. Furthermore, there is a reduction in the canonical revenues following the death of the founder, Q. If

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the founder himself had foreseen this, he might perhaps have been more lenient towards those to whom he directly left the endowment, and thus intended a benefit. However, the Sacred Congregation of the Council has not infrequently granted reductions in such service due to meager or diminished revenues, as in Rome, 18 April 1722, and elsewhere. It should also be noted that the Holy See can, at its discretion, grant an indulgence, either perpetual or at least until the Collegiate Church of B. Cathedral has been established; from which it also seems that the request of the Canons can be admitted, to which the Episcopal Curia also lends its support. These are the arguments against the petition. It has been observed, first, that a manifest will of the testator stands in the way of granting the grace. He designated a significant income for the purpose of attracting canons to choral service for the time when they would be free each week, as a reward for singular diligence, which, as he said, would truly only accrue to those actually serving in the choir. Just as distributions from a pious endowment are to be distributed only among those who actually serve in the choir, according to the will of the testator. Therefore, the Chapter's prayers would not be granted without a change and derogation of this will, for which there is no evident reason. Indeed, the alleged reduction in revenues, if it is truly the case, seems to apply more to other chapter funds than to the endowed fund itself. Furthermore, the founder, in his institution, did not consider the better condition of the chapter, but only the full choral service, as his purpose.

[*Latin ed. p. 452*]

452. Concerning vacations from the choir, an extraordinary dispensation may be granted; for I desire that more Dignitaries and Canons participate in the choir, to praise and bless the Most Holy Trinity for the sake of my soul, and for the soul of my brother Francis, and of my sister Xnveria; these are the words of the testament. Indeed, if the wills of the deceased are to be faithfully observed, it is especially important in matters concerning the increase of divine worship, which is better achieved the more who participate in the divine psalmody in the choir. Sacred Congregation of the Council, in Signina, Service of the Choir, December 16, 1837. Furthermore, the Council of Trent, although it grants quarterly vacations, as cited in session 24, chapter 12, concerning reforms, nevertheless adds: "Nevertheless, this does not annul the constitutions of those churches which require a longer period of service; and it is easily understood that what is said concerning the constitutions, applies to the particular will of the benefactor." Moreover, it is added that even if the Canons were to absent themselves from the choir for several months for the sake of honest recreation, and thus lose the corresponding income from the endowment, nevertheless, each one would still have, perhaps, enough to suffice for their decent support; since the income from the endowment, which in total amounts to approximately

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8211 florins annually, seems to provide each Chapter member with a share of approximately 525 florins. After mature consideration of these matters, regarding the proposed question of whether and how permission should be given to the prayers of the Orators in this case, the Sacred Congregation responded: "No, in all respects, and furthermore." THEREFORE, LET THE READERS UNDERSTAND: 1. It is not permissible for Canons to be absent from the choir for three months, when the constitutions of their churches require a longer period of service. 2. Much less is it permissible for them to be absent from longer choral service, since, by reason of such service, they receive special distributions specifically assigned for that purpose by the pious will of the testator. 3. For to desire to receive such distributions, and yet not to perform the prescribed service, indicates a soul that is somewhat lacking in justice and love of religion.

[*Latin ed. p. 453*]

453 OF THE RITES OF FUNERALS AND THE EXPENSES THEREOF. Decree of August 27, 1864. In a certain province, within the Diocese of N., two parishes are listed among others, one dedicated to Saint Elizabeth and the other to Saint Nicholas. In the parish of Saint Nicholas, a certain priest named Nicodemus had established his residence, after having sent a notification of his resignation from the office of parish priest; and he died suddenly on December 10, 1861. This priest had daily celebrated the sacrifice of the Mass at a time more convenient for the people, at the request of the pastor and officials of the other parish church of Saint Elizabeth, receiving for this purpose an annual stipend. Therefore, the pastor of this church of Saint Elizabeth declared that he had the right to conduct and perform the funeral of that priest, since the church of Saint Elizabeth was in his service, even though the priest had his residence in the parish of Saint Nicholas. To this, the pastor of Saint Nicholas replied that, in order to avoid scandal arising from contention, he would allow the funeral to be performed in the parish church of Saint Elizabeth, reserving, however, his rights, and that, if necessary, he was prepared to testify, under oath, as a parish priest, to what was due to him, and he reported this matter to the Sacred Congregation. * (omg » eiulium facti). In the meantime, on the same day, December 7, he sent a letter to the Bishop, in which, after recounting the series of events, he requested that a response be given to him as soon as possible, since the funeral was to take place within a few days; and he received this response on the following day, December 8, from the General Vicar. The General Vicar decided that the pastor of Saint Elizabeth had the right to perform the funeral, based on the reason that the deceased priest was a member of the clergy of that parish; and he cited an example in which

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a similar case had been resolved in this way. In Kosso.

[*Latin ed. p. 454*]

4J4 CONCERNING THE MATTER OF JURISDICTION. Nevertheless, such a response did not satisfy the pastor of Saint Nicholas; and he began to inquire into the opinions of the canonists concerning this matter, and he obtained unanimous agreement from them. He also wrote letters in the beginning of the month of March, 1862, to the pastor of Saint Elizabeth, in order that he might express his will and opinion concerning the question. However, on the 10th of that same month, the latter replied that he would express no opinion on the matter; and that since the dispute was pending before the Vicariate Tribunal, it would be dealt with by the same; and that he would do nothing, nor say anything, so that this matter would be resolved in one way rather than another, and that, for the first time since the beginning of this century, he would offer friendly advice to the pastor writing to him, so that he would desist from the matter, lest he encounter much trouble without success. When the pastor of Saint Nicholas discovered that the laws favored him, according to the opinions of the canonists that he had received; and, on the contrary, the pastor of Saint Elizabeth was reluctant to acknowledge these same laws, he formally petitioned the Bishop for a legal resolution of the matter. But he obtained nothing other than a private response from the Vicar General, dated July 27, 1862, with the following words: "According to common law, even titular canons are subject to the jurisdiction of the parish where they reside; but in that city, a contrary custom has prevailed, which, it says, the entire clergy observes, and which has never caused any pastor to question the legitimacy of such rights, with which the Dean of the Chapter is endowed by custom." The pastor of Saint Nicholas did not agree with this opinion of the Vicar General, and he insisted on obtaining a more definitive legal ruling from the Bishop concerning the right to bury and the subsequent restitution of emoluments. He attempted to demonstrate, through letters from the pastor of Saint Elizabeth himself, that there was no established custom in that city that contradicted the provisions of common law with regard to priests who are accustomed to celebrating the sacrifice of the Mass in a certain church with a stipend; but the pastor of Saint Elizabeth made no mention of this at all; indeed, he asserted that this was the first case since the memory of men, in which the present dispute arose. As for the cases brought forward in opposition, in which, indeed, the funeral rites were performed not in the parish church of the deceased,

[*Latin ed. p. 455*]

AND OF FUNERAL EXPENSES 455 but in those cases in which they were bound by service; he also rejected this custom, saying that in such cases, arrangements should be made for singers for whom the parish priest

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of the parish had given his consent. Furthermore, it should be noted that in these cases, it is usually easy for the parish priests of the parish to give their consent, since the funeral services of the singers are often provided free of charge by the Church to which they serve; he continued, noting that even if a custom existed for singers and others in places designated by the vicar, it could not be extended against the law and in a hateful manner from person to person, and even less from place to place. But after a period of one year, during which the parish priest of St. Nicholas had not obtained a legal judgment on the dispute that had arisen, even after repeated requests, he offered prayers to the Most Blessed Father on July 4, 1863, and, complaining of the right that had not been granted to him, he requested that the question between himself and the parish priest of St. Elizabeth be settled through legal means, also presenting documents and testimonies relevant to the matter. The prayers were rejected by the parish priest of St. Nicholas by the Sacred Congregation; and the same Sacred Congregation requested the bishop to provide the necessary information, along with his opinion; and it also inquired why a formal legal judgment had not been issued by the Ordinary regarding the aforementioned dispute. The bishop did indeed transmit the observations of the parish priest of St. Elizabeth; but he remained completely silent regarding the reasons for the lack of a judgment, and he refrained entirely from revealing any of his thoughts. DISPUTE. ST. ELIZABETH FAVORS THE PROTESTANT. The parish priest of St. Elizabeth noted that, following the opinion of certain canonists, it can be easily shown that clerics who die without having designated a burial place should be buried in the church of their benefice; thus, the Reverend Nicodemus, even if not truly a beneficed priest in the legal sense, certainly suffered the rights and obligations of a beneficed priest with respect to the parish church of St. Elizabeth; therefore, he should be buried in it. To support this, he warned that, after a period of...

[*Latin ed. p. 456*]

456 The law concerning burials, which caused considerable distress, both in Gallus and in Belgio, during the time of the Gallican disturbances and occupation, led to the restoration of certain foundations whose properties had remained unalienated, by the Government to the Churches to which they originally belonged, with the obligation of fulfilling the burdens attached. It was also reported that this had been accomplished for the Church of Saint Elizabeth, with five ancient foundations restored to it. Furthermore, I observed, with keen reasoning, priests who are said to reside, being chosen for these burdens, whether for celebrating Masses or for performing divine services (such as the aforementioned Nicodemus, with respect to the Church of Saint Elizabeth), to be bound to the Churches in which the benefices formerly existed, no less than the ancient beneficiaries themselves; although these priests are not properly

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called beneficiaries. From this, he argues that resident priests should, as far as possible, reside in the parish to which they are assigned, and should not have a domicile elsewhere, unless with the consent of those who have an interest, or with the permission of the Ordinary (as he believes was the case with the priest Nicodemus of the Church of Saint Elizabeth); and that, furthermore, they are obligated to participate in the divine services in these Churches, to celebrate the sacred mysteries, and to receive the ecclesiastical sacraments. He affirmed that the priest Nicodemus, while living, performed all of these things, being supported by the revenues of the benefices of the Church of Saint Elizabeth, and that he celebrated Mass daily for the founders there, and participated in the divine services in the choir with the rest of the clergy, under the eyes and without any complaint of the parish priest of Saint Nicholas. Therefore, he argued, it is fitting that he should have been buried in the Church of Saint Elizabeth, as stated in Chapter 2, and with the authority of Ferraris, who in Voc. Sepultura, n. 71, clearly teaches that beneficiaries with the burden of residence, dying without choosing a burial place and lacking a family tomb, should be buried in the Church of the benefice or residence, and not in their own parish. This opinion, which he calls the common one, is supported by countless authors, among whom is R arbosam.

[*Latin ed. p. 457*]

Furthermore, Van-Espen, in title 28, chapter 3, number 18, concerning burials, states: "The customary practice, which, with respect to beneficiaries, considers the parish church to which they are incorporated through the benefice, as their own, and they wish to be buried there if it can be done conveniently, even if they perhaps reside in another parish." He also cites from the statutes of the Diocese of Tournay (Tornacensis) of the year 1761, in which, regarding this very case, the answer given to question X is: "Who has the right to the burial of a beneficiary, those who are obligated to reside, and those who reside in another parish?" The answer given is: "The right belongs to the pastor of the parish of the benefice, and not to the pastor of the domicile." To this disposition, he adds the observance that he sought to confirm through related and comparable cases, obtained from the city of Tournay and elsewhere. He shows that in that city, the singers, sacristans, and sextons, who are laymen, receive the sacraments in the church to which they belong, even during Easter, and have the right to be buried there, even if they reside in another parish. And thus, he concludes: "For it is not for any other reason that singers and other laymen are granted burial in the church to which they belong, but because they offer service to that church; moreover, priests offer a far more excellent and continuous service to their church; therefore, all the more should they be granted burial in their own church."

However, it is stated that in the aforementioned cases, the pastor of St.

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Nicholas (S. Nicolai) requested permission from the pastor of the domicile. This act is considered a gesture of commendable urbanity; or, at most, a necessary license to transport the body and conduct the funeral within the boundaries of another parish.

After the pastor of St. Elizabeth (S. Elisabeth) has thus argued in defense of his rights, he raises an exception to the established precedent, so that the matter can no longer be disputed. He asserts that the definition is entirely subject to the judgment and decision of the Bishop.

[*Latin ed. p. 458*]

458 The matter entrusted to the Tribunal: And since the Bishop, through his General Vicar, has defined the question according to established custom in favor of the parish of Saint Elizabeth, and since the funeral and burial of Nicodemus actually took place in that church, the matter is considered settled, and the appeal of the parish of Saint Nicholas should be rejected from the outset. REGARDING THE ARGUMENTS PRESENTED IN FAVOR OF THE PARISH OF SAINT NICHOLAS. Firstly, it was observed that there can be no valid reason for such an exception, and that, as confirmed by historical facts and documents, there is no evidence of any agreement; moreover, it is quite clear that the parish priest of Saint Nicholas held a contrary opinion, at least from the complaints made by him the day after Nicodemus's death, and from the petitions he submitted to the Bishop for a legal determination of the matter. With these premises established, the following reasoning was begun. The law is that Christian faithful, whether lay or clerical, who die without having made a specific choice of burial place, are to be buried in the parish church, where they are accustomed to hear divine services and receive the sacraments, according to chapters 12 and 3 concerning burials, and chapter 2 of the same title, paragraph 6. This rule is confirmed by numerous authorities, among whom are Barbosa de offic, parodi, part. 2, chapter 27, number 1; Cardinal De Luca de Parodi, discourse 27, numbers 2 and 3; and Ferraris, V. Sepultura, numbers 68 and 69, who states: "Clerics and presbyters who die without having made a choice of burial place are to be buried in the cathedral, if there is a separate burial place there for priests and clerics, even if it is not the burial place of the ancestors. If, however, there is no separate burial place for priests and clerics in the cathedral, clerics and presbyters who die without having made a choice of burial place are to be buried in the burial place of the ancestors, if they have one, and if they do not have one, in their own parish. And the reason is that the law makes no special provision for them, and therefore their burial is to be considered in the same way as the burial of lay Catholics, since the law does not distinguish between them, nor should we." Furthermore, it is beyond doubt that the right to bury one's parishioners is included among the parochial rights; therefore, the right to perform the funeral service over the deceased should also belong to the parish priest,

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as a connected and dependent matter.

[*Latin ed. p. 459*]

AND CONCERNING THE BURIAL PLACES? 459. Although there have not been lacking authors, among whom Ferraris, cited above, n. 71, and others who hold the opinion that clerics or presbyters devoted to the service of a certain church, even if holding a benefice with a residential title, ought to be buried perpetually in the church of that benefice, since their bond with the church in which they reside is closer, where they hear the divine word and receive the sacraments, than with the parish where they only have a house; and that "beneficiated clerics," "with the obligation of residence, both simple priests and curates dying without the choice of a burial place and lacking a family tomb, ought to be buried 'in the church of their benefice and residence, and not in their own parish." Nevertheless, all agree that this requires the two aforementioned conditions, namely, a benefice with a residential title, and that title must be perpetual. Furthermore, a third condition is absolutely necessary to infringe upon the right of a native of the parish, especially after the Council of Trent, which prescribed the division of parishes into certain boundaries; thus, the Sacred Rota, in a principal decision, concerning the burial in Otranto, on November 27, 1713, concerning Arnold; and subsequently, very frequently and consistently, the Sacred Congregation, that there must be a particular and distinct burial place in the church of the benefice, destined for canons and other beneficiaries. Indeed, both ancient and modern resolutions of the Sacred Congregation prefer this; among which it is permissible to recall the principal ones in Narni, on September 16, 1677, in Tivoli, on May 12, 1685, and many others. And because it was found that there was no burial place specifically constructed for the canons of the Collegiate Church in [location], on July 24, 1827, the Sacred Congregation decided that a canon who died outside the parish of the Collegiate Church should be buried in the parish of his domicile. Therefore, it seems clear what should be decided in this present matter; since not only does that separate and distinct burial place not exist, but also the quality of being a beneficiary seems to be lost, as he could rather be said to be chosen to perform only the simple office of Mass in the Church of Saint Elizabeth, and that, moreover, with some ambiguity, according to the will of the parish priest and the officials of the church; for it was only for the satisfaction of the most pious benefactors (for these are the foundations of such institutions that are heard) that this was done.

[*Latin ed. p. 460*]

4. Regarding the law concerning burials, and concerning the custom to the contrary, it is indeed possible to dispute its validity, even in matters of burials and interments, if it has not been properly introduced, pre-

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scribed, and proven, as stated in chapters 1, 4, 6, 15, and 18 concerning prescription. Piringh, in his work, title 22, states that if a custom is not proven, the law favors the parish priest; and that, although the parish priest has the right to assist in the burial of deceased persons who lack a family burial plot and have not chosen a burial place, he is not obligated to do so. However, the one alleging the custom bears the burden of proving it conclusively, as stated in chapter 1, section 6. As Boniface VIII states in chapter 1, section 6, concerning constitutions: "For a custom consists in the repetition of an act." Furthermore, when dealing with the prescription of an alien right, and the common law resists such prescription, the generally accepted opinion of Doctors of Law, as stated in chapter 1, section 6, and especially by Barbosa and Schmalzgrueb in the aforementioned place, as well as by Ferraris, Volume V, paragraphs 9 and 10, is that the time required for prescription is either forty years with a title, or an indefinite period. Finally, since such a custom is odious, as stated by Cardinal De Luca in *De Beneficiis*, discourse 30, paragraphs 11 and 12, and by Barbosa in chapter 18 concerning prescription, paragraph 4, it is therefore considered to be of strict law, and has only as much force as its usage and practice allow; thus, it cannot be extended from place to place, from person to person, or from case to case, even if there is an identity of circumstances, let alone a majority of reasons. Rather, it must be proven in each specific case and individually, as taught by Cardinal De Luca in *De Beneficiis*, discourse 30, paragraph 12, and in *De Feudis*, discourse 53, paragraph 4, and by Schmalzgrueb in book 1, paragraphs 1, title 4, and 18. In particular, concerning the matter of burials, it is necessary to recall the resolution of the Holy Congregation in Lucca, dated April 2, 1729, in which, while the Cathedral Chapter and the parish priest of the church were arguing about the right to administer the sacraments to sick clergy and priests residing in another parish, based on an ancient custom recognized and confirmed in the synodal statutes of the year 1637, the Holy Congregation, in response to the question: "Is the Cathedral Parish Priest of Gubbio obligated to administer the sacraments to any sick clergy and priests?" answered:

[*Latin ed. p. 461*]

Concerning the emoluments pertaining to parishes, even those pertaining to the proper parish, the resident parish priest responded, "No, and they do not pertain to resident parish priests, and furthermore." These things, which have been noted, must be kept in mind in order to determine what, or how much, is to be attributed against custom, since they not only do not seem to be proven or peaceful; but even if they were fully proven, they would have to be extended from place to place and from one type of person to another, namely, concerning cantors and sacristans, as well as priests. This is the first doubt. The resolution of the other [case] seems to depend on the resolution of the first: so that if it is judged that the funeral

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and burial pertained to the resident parish priest, then the emoluments of the funeral received by the parish priest of Saint Nicholas must be returned. Indeed, all benefits received on the occasion of an improper burial are commanded to be restored with integrity, as stated in chapter 6 and 10 concerning burials, in chapter 1 of the same text, paragraph 6. The Doctors [of the Church] unanimously agree, and this practice is recognized as consistent with the Sacred Congregations [Congregation of the Holy See]; for in many such cases, there has always been the resolution that the emoluments of a funeral received on the occasion should be fully restored; as was decreed, among others, in Todi on July 4, 1792, in Sorana on April 24, 1773, and in Viterbo on May 10, 1766. This rule is so firmly observed that in Cagli, or Urbino, in the legal matter concerning burials, on August 30, 1817, even though certain good faith and a semblance of legal right might have been present for the parish priest of the Diocese of Urbino, who performed the funeral and burial of a certain parish priest of his own parish, who died by chance in the parish of the Diocese of Cagli, where the tomb of his ancestors was located; notwithstanding the fact that the parish priest of the Diocese of Urbino had favorable synodal constitutions and a tomb prepared for priests in his own church, he was compelled to restore the emoluments to the parish priest of the Diocese of Cagli, because the Sacred Congregation judged that the legal right belonged to the parish in which the tomb of the ancestors was located. Nevertheless, it must be considered whether, in the case in question, the Acts, Volume VIII, page 17, paragraph 30, excuse the restoration of the emoluments.

[*Latin ed. p. 462*]

462 Concerning the rights pertaining to funerals and funeral expenses, it is established that the Parish of Saint Elizabeth, or an opinion issued by the Vicar General with the affirmed consent of the Parish of Saint Nicholas, or an alleged custom, shall prevail. With these and other matters noted, the following questions were presented for clarification: I. Whether and concerning whose benefit the right pertains regarding the funeral and burial of the Priest Nicodemus in this case. And, as to this, the affirmative opinion of the Parish of Saint Nicholas is given. II. Whether and which expenses incurred on the occasion of the funeral by the Parish of Elizabeth are to be reimbursed in this case.

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on August 27, 1864, judged as follows: To I, affirmative, with the affirmed opinion of the Parish of Saint Nicholas. To II, affirmative in all respects.

FROM WHICH WE MAY GATHER:

I. All priests and lay Catholics, deceased without the designation of a

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burial place and without a family tomb, are to be buried according to common law in their own parish.

II. Only those who possess a benefice, and that a residential benefice, and that a perpetual one; if, however, a proper and separate burial place for clerics and priests also exists in the Cathedral.

III. In our case, the Priest Nicodemus lacks all the aforementioned requirements; therefore, it pertains to the simple performance of the Mass office in the Church of Saint Elizabeth, at the request of the Parish Priest and the official representatives of the parish.

IV. Sometimes, the natural right of a parish can be infringed even by a custom to the contrary; provided that this custom has been properly introduced, prescribed, and proven by the one who alleges it.

V. However, custom is of strict law; and therefore, it has only as much force as it has usage and practice; and it cannot be extended from place to place, from person to person, or from case to case.

[*Latin ed. p. 463*]

JURISDICTION. March 28, 1874. Summary of Facts. On April 13, 1849, a Benefice under the title of the Blessed Virgin was established for Chaplains in a certain Archpriestal Church within the Diocese A, due to the death of its titular; and from that time until the year 1865, it remained vacant of its rector. However, in the year mentioned above, on June 26, a certain Priest C., having obtained the nomination of patrons, petitioned for canonical institution. Before granting this, the Bishop took care to affix the customary edicts to the doors of the Archpriestal Church. As a result of this, the Priest P. and the Marchioness L. appeared before the episcopal court, by means of an interdict, requesting that the institution of the petitioner not be granted. The Priest C. immediately summoned his adversaries before the ecclesiastical court, in order that such an interdict might be removed. Meanwhile, the Marchioness L., who, by an Apostolic Indult, had retained the administration of other benefices, requested the prolongation of the aforementioned Indult for the said Chaplaincy from the Congregation of Sacred Orders. The Priest C. opposed this request, and a decree was issued that the cause be put on record and examined specifically with regard to the aforementioned Chaplaincy; and the Bishop assigned a reasonable term for the parties to present their rights. Regarding this matter, the episcopal court, which was already preparing to pronounce judgment concerning the aforementioned interdict, decided to suspend proceedings until the Congregation of Sacred Orders resolved the dispute. At times, the Cleric A. also asserted his right to the Chaplaincy through a supplication submitted to the Congregation of Sacred Orders; and he maintained that he should

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be granted the institution; but these requests were dismissed.

[*Latin ed. p. 464*]

4-6*4 The matter was discussed through a rescript entitled "Let this be read and notified to the Bishop," which reported that the marriage of the Clericum A. had taken place after the prayers were offered. The parties remained silent for a time; however, the Priest C. again, after offering prayers, requested that the dispute concerning the Chapel be resolved. Consequently, the matter was brought before the full meetings of the College of Canons, in order to determine whether the administration of the Chapel should be granted to the Marchionibus L., or rather, whether it should be assigned to the Priest C.

Before all else, it was required, by established procedure, that the founding documents be presented, in which it would be demonstrated what the will of the pious testator had been, concerning the patrons of this Chapel, both with regard to active and passive patronage. And therefore, nothing remained to be done in such a situation, except to ascertain the testator's intent through arguments of equal weight.

Indeed, four Episcopal Bulls of institution are held in the archives concerning this matter; the first was dated in the year 1680, the second in the year 1713, the third in the year 1737, and the last in the year 1754; and each of these covers a period of 74 years cumulatively. In these documents, it is consistently stated that the Chapel belongs to the lay family of S. Adesse. Furthermore, records of presentations are available, from which it is clear that only those who belonged to the family of S., either through the male or female line, have exercised the rights of patronage; only in the years 1713 and 1737 was the duty of presentation fulfilled, for one-quarter of the votes, by one of the Marchionibus L., as the beneficiary of a certain woman who had been instituted as heir by someone from the family of S. However, no indication can be found regarding passive patronage; and from the documents, it appears that the institution has always been held by the priest who held the sacerdotal office, and that nothing prevented this, whether he belonged to the family of S. or was an outsider. Nor can it be determined from the records what obligations are attached to this Chapel; but it seems certain that the active patronage of this Chapel belonged to the family of S.

With this established, it is easy to infer that someone is claiming a right that is not theirs.

[*Latin ed. p. 465*]

JURISDICTION 465: Regarding the right to nominate for this Chapel, it must be demonstrated that one belongs to the family of S., either through the male or female line. Furthermore, it was observed that only two individuals are attempting to assert their rights as patrons in this dispute:

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namely, one from the family of the Marquis L., claiming for himself and his descendants, and the other, a cleric C., claiming for his family. Regarding the first, it was noted that, if one recalls, in the years 1713 and 1737, a certain member of the family of the Marquis L., as a benefactor, as previously mentioned, used the right of presentation for one-quarter of the benefices, to a woman whom he had made his heir. Since the right of patronage can be transferred through donation to another, with the consent of the Bishop, as all Canonists agree, it is clear that the individual who claims to derive his right from the Marquis L. must be included among the patrons. Moreover, from the genealogical tree presented by the opposing party to support their claim, it can be seen that a certain Pudentiana S. entered into marriage with a member of the family of the Marquis L.; therefore, the one who claims to be descended from him should not be excluded from being considered a patron. Finally, it is established that the family of the Marquis L. has held the administration of this Chapel for many years, by Papal Indult; and this, in itself, demonstrates that they are indeed patrons, since, by practice, this privilege is granted only to patrons. See, for example, the decrees of the Sacred Congregation in Segovia concerning Chaplains, November 17, 1731; in Asuela concerning dispensations, May 20, 1786; in Aquila concerning Chapels, February 3, 1787; in Città della Pieve, December 23, 1826, and elsewhere. Neither the cleric C. nor his family can present an obstacle; for it is clear that they have never enjoyed such a right of patronage, and if they ever did possess it, they certainly lost it, and since they have never exercised it for a very long time, they have no claim. The cleric C., on the other hand, noted the following. Through a genealogical tree, which he presented in print, he attempted to demonstrate that he is the nephew of a certain individual from the family of S. in Vicenza, and is therefore entitled to succeed to his rights. He also...

[*Latin ed. p. 466*]

466 The claim is that the family derives its patronage from the Order of St. [Alphonsus], and therefore, the right of patronage in that matter has passed to it; and nothing prevents the family from asserting that it has never used the right of patronage by name. However, if this is due to invincible ignorance, since no series of presentations and institutions can be found prior to this date. Furthermore, it is added that since the year 1754, no new presentation has taken place, and at that time, perhaps the right of presentation did not yet belong to my family. Finally, the use of the right of patronage is optional, and therefore, the non-use of it does not run prescription, as stated by Piton, *de controv. patr. alleg.* LXVI, nos. 30 and 32, where he says: "and this negative act does not cause the right of patronage to be lost, since to present is an act of free will, by whose omission the right of presentation is not lost, unless there is a contradiction with subsequent consent, as affirmed by Ruin, *cons.* 50, no. 10, p. 5, *rec.*

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before Arguell, *decis.* 115, nos. 8 and 9, and *eorum Priol., decis.* 46, no. 13. Therefore, it follows that the right of patronage in that matter belongs solely to the family: for the family tree proves that it derives from the Order of St. [Alphonsus]. And if it were permissible to admit this, he continued, then it would also have to be the case that it applies to the family of the Marquis L., but that would have to be proven by them. However, even if this were admitted for a time, he said, it could not be concluded that the right of patronage in that matter applies solely to them, but rather, in all other respects, it applies to his family. Regarding the second point, it was observed that the Priest C. had requested the institution, or rather, the act of institution, which had already been initiated by the Bishop in his favor, and had been suspended by a contrary inhibition, and he had requested that the Holy See absolve him. His request should be granted, not only because of the right of patronage, but also because of the nature of the chaplaincy itself. From what has already been said, it follows that this right applies solely to his family; and to another, it applies only in the smallest part, to the greatest extent. Given this, it is clear that the institution should be granted to him. For Priest C. asserted that he had been named and presented by all the patrons of his family, and that he was the only one remaining. And therefore, also for this reason, he is entitled to the institution.

[*Latin ed. p. 467*]

The patronage right pertains solely to the institution, since the chaplaincy in the territory appears not to be able to be considered as having an ecclesiastical quality. Indeed, it is known among those who treat of canonical matters that two conditions are required as essential for establishing the ecclesiastical quality of a benefice: the first is that a decree of episcopal canonical erection must be present in the foundation; the second is that canonical institution by a bull must be issued in the collation of the chaplaincy. Reiffenst. lib. 3. tit. 5. num. 17. S. C. Ep. et Reg. concerning the chaplaincy in Aesina, July 18, 1851. For the former ensures that goods previously in civil commerce, after the decree of erection, are destined for ecclesiastical use, and are no longer in civil commerce, but are to be held as inalienable, as ecclesiastical goods. The issuance of the bull ensures that only a cleric canonically instituted can be admitted to the possession of the same chaplaincy. On the contrary, in lay chaplaincies, since pious legacies are involved, it is sufficient that the act of the Bishop be added, whereby a mere and bare acceptance of the chaplaincy is made in writing, according to what Benedict XIV teaches in *de Syn. Dioec*, lib. 13 cap. ult. num. 10, concerning the form of Apostolic Constitutions. Furthermore, in order that their possession may be legitimately acquired, the intervention of ecclesiastical authority is not prescribed, but it suffices that possession be obtained through acts of a notary, according to the sanctions of civil laws. With these things established, although it does not appear from the acts whether an

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episcopal decree was present in the erection of the chaplaincy in question, nevertheless, since the episcopal bull of its collation has been perpetually held, it seems that it cannot be said that it lacked in the foundation, and therefore the aforementioned conditions are verified for establishing the ecclesiastical quality of the benefice. Furthermore, another argument is gathered from the fact that the institution of this chaplaincy has so far been granted only to ecclesiastical persons, and indeed to priests. Therefore, it can be concluded that the patronage right in the territory pertains solely to the family of the Presbyter O., and that the institution should be granted solely to him, as he is the ecclesiastical person presented by the patrons. These things not at all hindering, the Marquis L. insists that the patronage right pertains solely to him, and this because...

[*Latin ed. p. 468*]

468. The patronage right pertains to a specific territory, and in this case, it has been exercised solely by that family; therefore, although it might be pleasing to say that the Presbyter C. has claimed the patronage right from the beginning, he has lost it through the non-use of such a long period. Consequently, even considering the ecclesiastical nature of the disputed chaplaincy, the administration of it should be granted to him based on equity. And indeed, nothing is more consonant with equity, and within the Holy See, nothing is more ancient than providing assistance to the poor, whether through the reduction of burdens, the dispensation of age, or finally, through the suspension of nomination, and the administration of the benefice. And this is all the more so because the Marchiones L. have perpetually held such an administration. Having considered these matters, the following points must be resolved: I. To whom does the patronage right belong in this case? II. Should the chaplaincy be established for the Presbyter C., or rather, should the administration be granted to the Marchio L.?

RESOLUTION. – The Holy Congregation of the Council, having knowledge of the case, decided on March 28, 1874, to respond as follows: To I. Affirmative, in favor of the descendants of the family. To II. Negative, regarding the second proposition.

FROM WHICH WE GATHER:

I. There are two ways to proceed in determining who should succeed in the patronage right, both active and passive; namely, through the founding documents, if they exist; but if they are lacking, through arguments that are heard, which are of equal weight.

II. Canonists agree that a patronage right can be transmitted to others through donation, provided that the consent of the Ordinary is not lacking.

III. To prove the patronage right over a certain benefice, an argument can

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also be derived from the fact itself; for example, if, from a remote time, the administration of that benefice has been granted to someone by a pontifical indult; since such a privilege is usually granted only to such patrons.

IV. To establish an ecclesiastical benefice, two things are essentially required: namely, that there should be an Episcopal decree of canonical erection in the founding document; and in the collation, that the canonical acts of institution, namely the Bulls, should be issued.

[*Latin ed. p. 469*]

46J CONCERNING MASSES FOR THE PEOPLE. January 23, 1875. Summary of the case. The Bishop of the Diocese of B., under date of May 18, 1874, addressed the Most Holy Prince, presenting a written account stating: "The parochial care in the city of B. and its suburbs has, from the most remote times, habitually resided with the Chapter of the Cathedral. The actual care was exercised by two Sacristans in the city and by six Chaplains chosen by the Chapter itself. However, in the year 1834, two parishes were established in the city, and six in the suburbs, to which the same number of true pastors were appointed, while the rights pertaining to the Chapter were nevertheless preserved. Moreover, both before and after the establishment of these parishes, a false opinion prevailed concerning the celebration of Mass for the people, by virtue of which, both the old Sacristans and Chaplains, and also the more recent pastors, either never or rarely performed, through the conventual Mass, which is offered daily in the Cathedral church by the habitual pastor or the Chapter, sufficient and ample parochial duties. The Bishop continues, stating that this abuse, for the same reasons, persists with regard to the aforementioned pastors, although these parishes have been established for three centuries, and the Cathedral Chapter has not retained a habitual pastor. All of this being the case, and in order to provide for the future, the petitioner implores the following: 1° That absolution be granted to those modern pastors of B., and to those of the Diocese of F., and to all those who, in times past, have served as pastors or vicars in those churches, for past omissions. 2° That, for the relief of the aforementioned ten modern pastors, who have not..."

[*Latin ed. p. 470*]

470. Concerning the Mass for the People, a small alms collection is taken on feast days for the application of the Mass; and those who contribute, especially in times of need, enjoy a small benefit; furthermore, for those who, within seven years, succeed them in the same office or parish, the obligation of offering the Mass for the People is restricted and reduced to only on Sundays, by Apostolic authority. With these things in mind, a decree was issued, as follows: Through summary petitions. Synoptic discussion. The following were noted from the official documents: It is clear from the account of the matter that two things are requested of the Bishop: 1°

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Absolution regarding past Masses for the People that were not celebrated; 2° A reduction in the future of the Mass for the People to only on Sundays. However, contrary to such requests, we read prescriptions from the Council of Trent, Session 23, Chapter 1, concerning Reform, from which it is clearly evident that all pastors of souls are bound to celebrate for their flock, and that this is imposed upon them by divine law. These words are as follows: "For it is commanded by divine law to all to whom the care of souls has been entrusted, to offer sacrifice for their flock." This obligation, being general and indefinite, has been determined and restricted by ecclesiastical law to all Sundays and feast days, on which the faithful ought to hear Mass. This is clearly evident from various declarations of the Holy See in Pistorien and Praten, of February 14, 1699, which were approved and confirmed by Innocent XII in a special Brief of April 24 of that year, as follows: "Now, furthermore, especially from the Constitution of Benedict XIV, entitled 'Cum semper oblatas,' of August 19, 1744 (1)." BENEDICT XIV, in the aforementioned Constitution, which descends from the Council of Trent, Session 23, Chapter 1, concerning Reform, expresses the following in these words: "AND INDEED, AS WE HAVE RECENTLY ANNOUNCED, THE SACRED SACRIFICE OF THE MASS SHOULD BE APPLIED BY PASTORS FOR THE VERY PEOPLE TO WHOM THE CARE OF SOULS HAS BEEN ENTRUSTED, AS IF, FROM THE DIVINE COMMAND, IT WERE REQUIRED OF ALL TO WHOM THE CARE OF SOULS HAS BEEN ENTRUSTED, TO OFFER SACRIFICE FOR THEIR FLOCK."

[*Latin ed. p. 471*]

The obligation to say Mass for the people has always been a very grave and efficacious means in the Church of God, so that pastors who care for souls are bound to celebrate Mass for the people, even on feast days, in which, while the obligation of hearing Mass remains firm, it is permitted to the faithful to perform servile works. In this matter, it is fitting to recall what Benedict XIV prescribed in § VII of the aforementioned Constitution. "And because in some dioceses the number of days of feasts of precept has been reduced by our Apostolic authority and with the consent of others, so that indeed on some feasts the faithful must both hear Mass and abstain from servile works; while on others it is permitted to the people to perform servile works, while the obligation of hearing the sacrifice of Mass remains firm; We, in order that all doubts concerning the burden of applying the parish Mass on such feast days may be completely eliminated, decree and declare that even on those same feast days, on which the people are obliged to attend Mass, and can also refrain from servile works, all those who care for souls are bound to celebrate and apply the Mass for the people." What was established in the aforementioned Constitution must also be extended to the feast days suppressed by Pius VI without any limitation; for the Holy Father, in suppressing those feasts, had only this in view: to exempt the

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faithful from the obligation of hearing Mass and abstaining from servile works; not to relax the burdens incumbent upon the pastors. Therefore, the obligation of the parish priest to celebrate for the people, as before the limitation by Benedict XIV, and the reduction made by Pius VI, so now it is urgent and in force, as is evident from the fact that, for these sacrifices, offerings are accepted. And although there have been those who, through empty and frivolous interpretations, have sought to remove or at least weaken this obligation from the minds of some, since the words of the Council are sufficiently clear and enough, and since the aforementioned Congregation of the same Council has decreed that those to whom the care of souls is entrusted must not only celebrate the Sacrifice of the Mass, but must also apply its fruit for the benefit of the people to whom they are assigned, nor may they apply it for others, or receive alms for such application; and moreover, this understanding has been approved and confirmed by Our predecessors, the Roman Pontiffs.

[*Latin ed. p. 472*]

472. Concerning Masses offered for the benefit of the faithful, there were no declarations from the Holy Penitentiary regarding burdens of conscience, which had been collected and presented by those burdened with moral obligations. Those who were truly burdened with the care of souls in Fermo had, in fact, always been denied, and their petitions had always been rejected by the Supreme Pontiffs, without any consideration given to the justness of their cause, which they presented as a reason for seeking grace. Indeed, let us hear what Benedict XIV states in his frequently cited and celebrated Constitution *Cum semper oblatas* § 8: "Because, indeed, we have often learned through our own experience that some parish priests are so poor that they are compelled to live almost entirely on the alms which they receive from the faithful for the celebration of Masses— therefore, we, deeply pitying their poverty, and wishing to help them as far as it is proper for us, grant to each of you the faculty to dispense, with those whom you know to be truly such, so that they may freely and lawfully receive and apply, even on feast days, such alms offered by some pious person, for the very sacrifice itself, as they may require— with this condition added, that they offer as many Masses for the benefit of the faithful within the week as there are feast days occurring within that same week, according to the particular intention of another pious benefactor." However, despite these legal regulations, the reasons presented by the Bishop in his suppliant letter seem to be of such importance that his petitions appear to deserve to be accepted. Indeed, with regard to the granting of absolution concerning the Masses offered for the benefit of the faithful that were omitted, both the good faith of the parish priests and their serious loss seem to suggest this. For, as far as the good faith is concerned, it is sufficiently and abundantly demonstrated from the very

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words of the Bishop, who says: "The celebrant... has discovered a false opinion regarding the celebration of a Mass for the benefit of the faithful... The parish priests either never celebrate this Mass, or rarely celebrate it, believing that the conventual Mass, which is offered daily in the Cathedral Church by the resident parish priest, or by the Chapter, sufficiently and abundantly fulfills the parochial obligation." And, as for the serious loss that would befall them if their petitions were not granted, it is evident that...

[*Latin ed. p. 473*]

Regarding Masses for the People, 473 are needed, and this is clearly evident from the fact that those who are now obligated to celebrate all the Masses for the People are those who, for many years, have neglected to offer even a single Mass on each festive day. How grave this is, no one can fail to see, especially considering the scarcity of benefices that these pastors enjoy, and the demands and hardships of the times, which make the sustenance of life more difficult due to the scarcity of provisions. This last reason seems to be of such great importance that not only should absolution be granted for past omissions, but also that Masses for the People should be reduced to only Sundays in the future. Indeed, it is established by law that the eleemosynary Masses were instituted so that provision might be made for the sustenance of priests; this is taught by St. Thomas and is commonly held by theologians and canonists, as can be seen in Benedict XIV, *De Synodo Dioec.*, lib. 5, cap. 8, and Bleiffenst., lib. 5, *decret.,* tit. 3, *de Simonia*, 10, n. 185 and following. Therefore, if the parish income is so inadequate that it is not sufficient for the sustenance of the pastors, and for the fulfillment of the burdens attached to their ministry, it is not new in law that recourse should be had to the eleemosynary Masses to provide for their sustenance, in order to avoid the shameful spectacle of pastors and others who care for souls being occupied with unsuitable business in order to acquire what is necessary for themselves. On the other hand, if there is no prospect of increasing the parish income, and there are no endowments or other burdens that can be reduced, it seems just to deal with the pastors in some milder way, namely, by resorting to some moderation of the aforementioned decrees; for it is known that he who serves at the altar should live from the altar, and the ox that treads the grain should have its muzzle fed. Finally, Benedict XIV, in his repeatedly praised Constitution, when speaking of the obligation that the Chapter has to satisfy the conventual Mass for the souls of the pious benefactors, compares it to the Masses that the pastor is obliged to offer for the People, and refers to them. Indeed, it has often happened that, due to insufficiency, or due to the scarcity of revenues, and other just causes, the conventual Masses have been reduced

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with the approval and authority of the Sacred Congregation.

[*Latin ed. p. 474*]

474. IT IS THE UTMOST DESIRE that the Holy Mass be offered for the benefit of the people. For this reason, it seems possible to grant dispensations regarding such a practice, provided that a just, legitimate, and reasonable cause is presented by the Bishop in his prayers. Therefore, it would seem permissible to grant an absolution not only concerning past Masses not celebrated, but also a reduction of the obligation to celebrate Mass for the people to only Sundays, as well as other feasts. With these considerations in mind, it was the intention of the Most Reverend Fathers to determine what would be most conducive to the salvation of souls. RESOLUTION: The Sacred Congregation, having considered the matter, responded on January 23, 1875: "Regarding the granting of absolution for past omissions, a single Mass should be celebrated by each parish priest. Regarding the future, for the granting of a reduction of the obligation of celebrating Mass for the people to Sundays and other feasts, the application of the precept should be made for seven years, with the spoken words [specified]." THEREFORE, IT IS DECREED: I. That parish priests may in no way refuse the obligation of offering Mass for the people, neither by reason of custom nor by reason of poverty. II. That this obligation can be a real and personal one: so that if a canonical cause or necessity arises, by which the parish priest himself cannot offer the Mass, he is obligated to have it offered by another. III. That this obligation must be fulfilled by the parish priests on Sundays and feast days, and cannot be transferred to other days, unless for a legitimate reason or by a pontifical dispensation. IV. That the canons of cathedral and collegiate churches are obligated to offer the conventual Mass daily for the benefit of the benefactors; and they are not to be excused by any contrary custom, even if ancient, or by the lack of revenues.

[*Latin ed. p. 475*]

47. FROM THE HOLY CONGREGATION FOR BISHOPS AND REGULAR CANONS. Year 1874. In Rome. On the tenth of the month of June, the Most Reverend Joseph Eleonora O., of the Archdiocese of F., who passed away on the eleventh day of November, 1823, bequeathed to the sacristan of the Monastery of Saint Clare, certain property commonly called "Cascina," with the following stipulations: 1. That, perpetually, a daily Mass be celebrated in the church of the aforementioned monastery for the soul of herself and her deceased parents, by a chaplain chosen by the Chapter of Religious, with the approval of ecclesiastical authority; 2. That, among other chaplains, a relative of hers be chosen, who was either a priest or a member of one of the higher religious orders; and that, if the aforementioned chaplain, by reason of his own infirmity, could not celebrate Mass, another

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should fulfill this obligation in his place; 3. That the monastery should pay the chaplain, each year, the sum of 500 livres for the celebration of Masses for alms, at a time to be determined by the Religious Chapter; and that they should have the power to remove the chaplain for just causes, which should be known to the Archdiocesan Curia; 4. That, from the more abundant revenues of the property, the sum of 400 livres should be paid each year to her sister, who was a professed nun in the same monastery; and that, upon her sister's death, 400 livres should be offered for Masses for her soul; 5. That the feast of Saint Joseph, the Patriarch, should be celebrated perpetually each year with greater solemnity, as determined by the Religious Chapter. However, foreseeing the possibility of the suppression of religious orders, the pious woman replaced the aforementioned stipulation with the following: that, should the aforementioned monastery and the aforementioned sacristy cease to exist for any reason, a chapel should be established from the assets of the inheritance.

[*Latin ed. p. 476*]

476. A substitution was made in the insignia of the Collegiate Church of Saints Peter and Paul in the city of C; and from these same goods, an endowment was established. The active patronage, or the right to appoint a chaplain, was granted to the pastor for the time being of that parish church, along with the aforementioned obligations. When, on May 29, 1855, the religious orders were abolished by law, the pious testator's will could not be immediately carried out; therefore, the endowment for the chaplaincy was assigned, and a pension of 350 livres was established for the nuns to fulfill the obligations of their church. On August 24, 1873, the pastor of the church in C informed the bishop about the state of the chaplaincy, adding that, since 1855, he had had the right to appoint a chaplain, but had refrained from doing so, first because such a suppression was disapproved of by the Church, second, so as not to prejudice the endowment granted to the nuns by the government, and third, in order to conform to the judgment of a certain jurist, who asserted that the aforementioned substitution should be considered a trust, and therefore was prohibited by law and had no value. However, when the law of August 15, 1867, was published, which stipulated that, henceforth, chaplaincies were not to be considered as entities with either ecclesiastical or lay patronage, in order not to inflict a greater injury on the rights of his parish, the pastor appointed the Reverend Father Francis C. as chaplain, with the intention that the administration of the religious funds could be compelled to assign the necessary portion for the fulfillment of the obligations, even though, upon the death of the chaplain, the assets of the chaplaincy would be assigned to the treasury; which would not have been possible if the institution had been extinguished along with the monastery. On July 13, 1867, the notary was consulted for the act of appointment, and the aforementioned obligations

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were imposed upon the priest. 1. To celebrate Mass daily in the morning on weekdays, and around noon on feast days, in the Collegiate Church of the city of O. 2. To solemnly celebrate the feast of Saint Joseph. 3. To maintain the sacristy of the aforementioned church with all that is needed for the celebration of Masses. 4. To repair, according to the judgment of the superiors, the [Sanctif]...

[*Latin ed. p. 477*]

Forty-seven nuns of the monastery of St. Clare, agreed to bear any damage that might befall them in order to recover the property located in Fondi, which was to be used for the endowment of the Chapel.

5. To bear with their own funds the necessary expenses for conducting a lawsuit to recover the property. Therefore, with these conditions, the priest Francis was admitted to the real possession of the Chapel. The chaplain immediately turned to the administrators of the property in order to recover it for the use of the endowment of the Chapel; but he obtained nothing; therefore, he initiated a lawsuit; which the administrators, fearing, voluntarily recognized the aforementioned priest as chaplain, according to the law of July 13, 1867. The reasons for which the chaplain was assigned were an annual income of 1100 livres, together with 6000 livres for a five-year pension not received; from which the obligation to satisfy pious burdens from the day of the institution, or the acquisition of possession, arises, provided that they have not been fulfilled. Meanwhile, on October 18, 1873, the Archbishop issued letters of this kind to the chaplain C. Dos, establishing that this Chapel constituted part of the endowment of the monastery of St. Clare. Indeed, the pious testator wished that, if the monastery ceased to exist, a chapel should be established from the assets of the endowment; but the monastery exists before the Church, and if it does not exist before the civil authorities, it is because of a reason that the Supreme Pontiff has not declared, and therefore, it cannot legally deprive the monastery of its rights. It is also true that the reason was considered to be a legitimate one and had been judged as such; but so that the endowment would not be devoured by the government. In short: a chapel was established from the assets of the monastery, and possession was granted to an ecclesiastical person so that he might, before the civil authorities, defend the rights of the monastery. This ecclesiastical person, according to the laws, received 1097 livres from the government from the day of the acquisition of possession, and then more or less 6000 livres for the fruits of five years not paid. From this, it seems just that the chaplain, after deducting his expenses, should pay the remaining sum to the holy nuns; which sum is perhaps half of what they were previously receiving. Nevertheless, the aforementioned nuns should

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turn to this counsel, as stated in Acts 7, verse 17.

[*Latin ed. p. 478*]

478. Statutums ut Capellano dimittant libellas annuas 300, quolibet anno liberas, dummodo reliquum ipsis restituatur, incipiendo a die 13 Iulii 1867; qua re valde Cappellanus contentus esse debet. Die vero 24 Octobris ejusdem anni Archiepiscopus iterum Capellano scribebat: Ea in sententia per sto ut libellae 300 tibi oblatae quo sanctimonia tibiis conserventur annuae libellae 1093 satis tibi videri debeant, neque aequis conditionibus te oppositurum spero. Verum cum haec Capellanum non adeo moverunt, sub die 27 Octobris iterum scripsit Archiepiscopus, censuras eidem comminatus si parere recusasset. Ita agis, ut neque sancti monialibus, neque Collegiatae per solvas quod jus exigit. In instrumento possessionis onus tibi assumpsisti celebrandi missam quotidianam hora adeo incommoda, ut pro tali onere satisfaciendo requirantur libellae 700, et tu vis persolvere libellas 350. Haec ab Episcopo ferenda non sunt; quare cum meo vicario generali, atque advocato Fiscali negotium age, ne cum meo animi dolore Ubi suspensionem a divinis afligere compellar. Et reapse die 12 Novembris 1873 negotium coram V i cario Archiepiscopi generali pertractatum est, et ejusmodi rationes pro tuendis juribus suis a Capellano adductae, ex quibus Archiepiscopus intelligeret conditiones a se propositas graves esse. 1. Capellaniam fuisse legitime erectam juxta testatricis mentem, quae eam monasterio supprimendo substituit; quare se legitime investitum esse et judicari debere (1). 2. Sibi onus gravissimum assumpsisse eripiendi a Daemanio Capellaniae dotem, ut sine monasteri detrimento, cui persolvere semper volebat libellas 350 quae antea ipsi a Gubernio persolvebantur, Collegiatae Ecclesiae C. jus asservaret quod in eo erat ut extingueretur, si tempore habili Capellania erecta fuisset. 3. Dotem ad dimidium redactam fuisse; justum proinde 7 (1) Einsmodi ratio a Capellano adducta adeo gravi est ut fem conficiat.

478. It is decreed that the Capellanus (chaplain) be granted an annual allowance of 300 florins, free of all charges, provided that the remainder be returned to them, beginning on July 13, 1867; and the Capellanus should be greatly pleased by this. On October 24 of the same year, the Archbishop wrote again to the Capellanus: In this matter, I state that the 300 florins offered to you, so that your sanctity may be preserved, should be considered a sufficient annual allowance of 1093 florins; and I hope that you will not oppose these conditions. However, since these matters did not sufficiently move the Capellanus, on October 27, the Archbishop wrote again, threatening the Capellanus with penalties if he refused to comply. You act in such a way that neither the nuns nor the Collegiate Church receive what is due to them. In the instrument of possession, you assumed the obligation of celebrating Mass daily at an inconvenient hour, so that to fulfill this obligation, 700 florins are required, and you wish to pay only

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350 florins. These things are not bearable by the Bishop; therefore, I am dealing with this matter with my general vicar and the Fiscal Advocate, so that, with my sorrow, I may not be forced to inflict a suspension from divine offices upon you. And indeed, on November 12, 1873, the matter was discussed before the general vicar of the Archbishop, and such reasons were presented by the Capellanus to defend his rights, from which the Archbishop understood that the conditions proposed by him were serious. 1. That the Capellanus had been legitimately established, according to the mind of the testatrix, who had replaced the monastery with it; therefore, he should be considered legitimately invested and judged (1). 2. That he had assumed a very heavy burden by depriving the Capellanus of the endowment of the chaplaincy, so that, without harming the monastery, to which he always wished to pay 350 florins, which were previously paid to him by the Government, the Collegiate Church of C. might preserve its right, which was that it would be extinguished if the chaplaincy had been established in due time. 3. That the endowment had been reduced to half; therefore, it is just that... (1) Such a reason was presented by the Capellanus, so grave that...

[*Latin ed. p. 479*]

SUBSTITUTED! ox. s ¿79 so that even the attached expenses could be reduced, according to the revenue assigned by the Government. 4. Finally, the monastery could not reasonably refuse if what it previously received from the Government in the future would be received by the Chaplain, since this one had endured so much for the recovery of the monastery's goods. The Vicar General, having heard both parties, observed firm and consistent reasons, and therefore he endeavored to settle the matter in such a way that only what was necessary for the application of the masses would be taken from the sum assigned by the Daimonio; the remainder would be divided equally between the monastery and the Chaplain. The Chaplain accepted the agreement, seeking to please both the Bishop and the Vicar General. And in the meantime, the Parish Priest presented suppliant petitions to the Archbishop, 1. to request that he would deign to allow the pious duties which were to be performed in the monastery to be performed in the Collegiate Church, 2. to strive to obtain a reduction of the pious duties, if he thought it advisable to accept the agreement, according to the diminution of revenues. But when, on December 2nd, the Vicar General informed the Chaplain that the proposed agreement would not be valid with the conclusion of the lawsuit, but if it were rejected by the Bishop, the Chaplain presented the matter to the Sacred Congregation of Councils, and explained 1. that he and the Archbishop were of the same opinion regarding the law promulgated by the Italian government on May 29, 1855, and that they considered it to be of no value; nevertheless, although the suppression had been foreseen by a pious witness, and for that reason the

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Chaplain's office was substituted according to canon and civil laws, so that the government would not be defrauded of its property, the Chaplain's office is to be considered legitimately established, and the investiture legitimately conferred. 2. That he had never been in the intention of merely providing a name for the recovery of the monastery's goods; but for the sake of peace, and to avoid any scandal, he was willing to agree to the conditions proposed by the Vicar General. 3. To humbly request the Holy Father that, after having seen and considered the matter, he would allow him to retain the assigned pension, to reduce the pious duties, and to preserve him from censures.

[*Latin ed. p. 480*]

On the 17th of December, 1873, the Archbishop himself, in the name of the religious order, appealed to the Sacred Congregation of Extraordinary Affairs and Regular Canons, seeking a just judgment; and after recounting the history of events, beginning with the will and continuing with the disputes that arose between the government and the priest C., he affirmed that the priest had received from the government a pension of 1003.88 florins per year, as well as other sums which had not been paid for five years, from July 1st, 1867; that he had remained in the city of T. and not gone to the city of C., and that he had presented to the religious order bills amounting to 365 florins for the celebration of Masses, and 30 florins for the Feast of Saint Joseph; and that he had appropriated 600 florins to himself from July 1st, 1867, without rendering any service in return. Furthermore, after a most careful examination of the matter, it was observed that the monastery had not been suppressed by a higher authority, because the Holy Father had declared that there were no laws whatsoever concerning the suppression of such institutions; therefore, the religious order had not lost its right to the bequeathed fund, nor to its revenues. Therefore, he requested the Eminent Prefect to order the priest C. to pay to the religious order the annual bills of 700 florins, beginning from July 1st, 1867; and furthermore, to pay 4550 florins for the sums not paid for five years; and that 303 florins per year be sufficient for him, which should be considered more than adequate compensation.

After hearing the opinions of those interested, who had sent letters to the Archbishop for information and to express their views regarding the matter of the Masses, the following decision was made:

1. The priest C. must enter into a written agreement with the Archdiocesan Curia, in which he obligates himself to pay to the aforementioned Curia, in two installments each semester, the annual bills of 650 florins, beginning on July 1st, 1867. The remaining bills of 351.48 florins shall be given to the priest himself, without any obligation.

2. The Curia shall assume the burden of satisfying the pious expenses.

3. The Curia shall pay to the religious order the aforementioned sum,

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from which a stipend shall be paid to the priest, so that he may celebrate 80 Masses per year, according to the reduction obtained, and solemnly celebrate the Feast of Saint Joseph.

4. The priest shall be obligated, through the mediation of the Curia, to give to the religious order the sum of 4225 florins, which he had received for the aforementioned fruits.

[*Latin ed. p. 481*]

SUBSTITUTIONE 481: Concerning debts not paid by the administration from July 1, 1867, to July 1, 1873, and for the half-year from July 1, 1873, to January 1, 1874, deducting, however, 200 livres which the Religious Fathers ultimately paid, and two-thirds of the expenses incurred for the recovery of the Chapel. 5. If, however, the monastery should be entirely dissolved, the Chaplain C. is obligated to celebrate Mass in the Collegiate Church C., according to agreements made; and the Curia shall remit the entire sum to him. After receiving these letters, the Congregation of Bishops and Regular Canons decided that the matter should be discussed before the Most Eminent Fathers, and on May 16, 1874, a deadline was set for the parties to present further arguments if they wished. The following points were presented concerning the Chaplain: 1. It has been demonstrated that the will and the act by which the priest C. was invested with the Chapel are public acts, possessing all the requirements and conditions prescribed by Canon and civil law; therefore, it cannot be asserted that the will of the pious testatrix is violated, that prejudice is caused to the Chaplain, or that the laws of Canon and civil law are violated. For the express will of the testatrix was that, in the event of the suppression of the monastery, at any time and in any circumstance, and therefore by virtue of the aforementioned provision, if a pious endowment were made to the sacristy of the monastery, the Chapel should be replaced from the assets with the same pious burdens expressly stated by the testatrix. The will of the testators is held as sacred by all, and in our case, it was observed by the Daeman; nor does the Church wish that the will of the testators be violated; therefore, whatever is opposed to the will of the testatrix, as expressed in the aforementioned documents, should be rejected as unjust and unacceptable. The designation of the Chaplain is nothing other than the legal consequence desired by the pious testatrix in order that the will be carried out. Even if the erection of the Chapel and the act of designation should suffer from some defect, nothing now pertains to that.

[*Latin ed. p. 482*]

482. SUBSTITUTE! O M S. The vices are skillfully employed, since Canon Law prohibits any action against one who has peacefully possessed a benefice for three years, and the Civil Code of the Kingdom of Italy, Article 1300, in conformity with the Albertine Code, Article 1395, prohibits

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the same action against one who has possessed it for five years; but, in truth, it is the seventh year in which the Chaplain has held the Chaplaincy. Furthermore, if the acts in question were subject to any vice, the Daemanium would not in any way recognize the Chaplain's rights; therefore, the existence of the Chaplaincy and the institution of the Chaplain cannot in any way be impugned. 2. But the monastery is not to be restored to those burdens which are listed in act number 4. For, 1. from the context and the words used, it is clear that new burdens, beyond those prescribed in the Will for the Chaplain, were not imposed upon him; those burdens, moreover, were erroneously listed in the act of nomination; and an obligation cannot arise from an error; nor can he who enjoys the active right of patronage impose a burden against the manifest will of the pious Foundress. 2. Because that indemnity is contrary to the will of the testatrix, who wished that the Chaplaincy be substituted in the entirety of the bequeathed goods. 3. Because the monastery, according to the law promulgated by the Government on May 29, 1855, received an assignment or revenue corresponding to the revenue of all the goods it then possessed, and consequently, also the goods of the testatrix, and because the pensions of the religious were attributed to the total revenue; for which reason, no loss was suffered. 4. Because not the entire property of the testatrix was restored by the Government, but only some sum, and indeed, a small one. 5. Because it cannot be said that the monastery suffered real damages, since these have neither been proven nor proposed. Indeed, since the alms of the Masses were increased from 80 cents to 1 libra and 50 centavos, the sum of 350 libras proved insufficient for the fulfillment of the pious burdens; and the monastery, having obtained a reduction of those burdens, gained something from this part. To these things, it is added that, it often happens that pious founders, foreseeing the end of their institution, provide for it in another way.

[*Latin ed. p. 483*]

SUBSTITUTIONS 483 may effect operations, or institutions, even if the reason is bad and reprehensible, as is entirely the case in our situation. And what is more serious, we repeat that this has been decided by the Holy Congregation of the Council, not once, but repeatedly; as in the decree of Fulginata, of January 12, 1859, in which, when a house had been sold by Daemian, in which spiritual exercises were to be performed twice a year according to the will of the testator, and the Orphanage was substituted; that substitution certainly ought to be considered, all the more because the final purpose of the foundation could be carried out in another way; and yet the Holy Congregation, in response to the question – Whether and from what time the place of substitution for the inheritance of Felician Jacobilli, in favor of the pious house of Orphans, should be granted, or whether possession should be restored, and the fruits returned – answered:

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affirmatively in all respects; but the fruits should be restored from the time the lawsuit began. This seems to conform to the principle of law: as it is written, so let it be done. These are the arguments alleged in support of the Archbishop's proposal. It was stated that 1. there is no place for substitution as long as there is any hope of observing the testamentary dispositions; as happens in our case; for the religious can live together, and the suppression is not to be considered total; moreover, the testator would never have made a will, if this had been contemplated. 2. The government pays little attention to how the revenues are disposed of, as long as the disposition is made prudently. 3. It should be noted that, in the suppression of the moral assets of the ancient provinces, the government has not conceded pensions according to the revenues of the funds, but restrictively; indeed, Article 9 of the law passed on May 20, 1855, No. 878, stipulates that the pension for religious should not exceed 500 florins, and 240 florins for lay people; besides, the *pomaria* which lie within the cloister. For this reason, the Archbishop wanted to argue that whatever remains, especially the past fruits, should be entirely given to the monastery, since it has suffered losses from the alienation of the goods. Finally, grace cannot be granted for the reduction of the burdens of the pious.

[*Latin ed. p. 484*]

484. It seems to be denied that a substitution [of benefices] is permissible, since the revenues have actually been diminished; although, even so, a reduction of masses is often more difficult to grant. Considering all these matters concerning the doubtful propositions, namely: "In what manner and to what extent is the substitution of the Legate, Lady Eleonora O., in favor of the Chapel, or rather, the proposal of the Archbishop, to be carried out?" 1. "And in what manner did the Holy Congregation of Bishops and Regulars respond to the requested reduction of masses?" To this: "It is the opinion that the Archbishop should be instructed to maintain the composition, as mentioned on page 29 of the Consultation, number 13 (1), and that it should be added that the sum to be paid by the Theologian, or Chaplain C., to the nuns, should be paid directly to the Archdiocesan Curia, and that Article 5, as mentioned on page 31 of the same Consultation (2), should be added; however, all of this should be done verbally with the Most Holy [Father]." 2. "Negatively, concerning the Theologian or Chaplain C."

FROM WHICH WE MAY GATHER:

1. Generally, a substitution is permissible even in the case of an impropriated benefice, if it has been foreseen and desired by the testators.

2. A substitution can be nullified by the agreement of those who have an interest in the matter, as in this case.

3. This question has been resolved not through legal proceedings, but

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through agreement.

(1) In that article, it was determined that from the books of 1001. 48, which now constitute the endowment of the Chapel, the sum of 440. 14 should be assigned to the Chaplain; and the remainder should be given to the nuns, with the obligation of paying for the celebration of masses reduced to 80, and of celebrating the feast of Saint Joseph, and that this proposal should take effect from July 1, 1867; consequently, the Chaplain should receive an annual sum of 440. 14 for the work performed, free from any burden; and, furthermore, he should be reimbursed for all and each expense incurred in the recovery of the goods.

(2) Here is Article 5, in the information and vote of the Archbishop.

[*Latin ed. p. 485*]

485: FROM THE APOSTOLIC PENITENTIARY, DECLARATIONS CONCERNING CERTAIN MATTERS RELATING TO THE INDULGENCES GRANTED IN THE BULL ISSUED FOR THE JUBILEE YEAR.

I. Whether the privilege granted in the Bull of the Jubilee Year, in favor of those traveling by sea and land, applies to those who, within the present year, will not be able to return to their homes, or to some designated location, and for whom the time for fulfilling the prescribed visits will therefore be extended, or does it apply only to those who can return to their homes or to some other designated location?

R. The Indulgence for those traveling by sea and land who are prevented from fulfilling the works prescribed for gaining the Jubilee Indulgence within the current year, is extended for one year.

II. Whether the words, repeated as many times as it is indicated how many times those traveling by sea and land must visit the Cathedral Church, or a larger or parish church, express only fifteen times, or truly sixty?

R. For those traveling by sea and land, fifteen visits to the Cathedral Church, or a larger or parish church of the place of their domicile or station, are prescribed, not sixty.

III. Whether, when the visit to four churches is substituted for the visit to a single church, and this substitution is repeated four times for any reason, must these four visits to a single church be completed on the same day as four visits to different churches, or can they, at the discretion of those visiting, be otherwise distributed over several days?

[*Latin ed. p. 486*]

486 DECLARATIONS CONCERNING THE JUBILEE YEAR.

Q. Is it required that the Church be visited, both upon entering and departing, for fifteen days?

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A. Yes.

Q. Does one gain the Jubilee who fulfills the prescribed conditions in a diocese other than his own, where he does not have a domicile, if he observes the ordinances of the Ordinary of the place where he resides?

A. Affirmative.

Q. Does one gain the Jubilee who makes confession and receives Holy Communion in a diocese other than his own, where he does not have a domicile, while having fulfilled, or intending to fulfill, the other works prescribed in his own diocese, according to the manner prescribed by his own Ordinary?

A. Affirmative.

Q. Does one gain the Jubilee who, after having performed part of the visits in the diocese of his domicile, transfers himself to another diocese, intending to acquire a new domicile there, if in that diocese he completes the number of visits prescribed by the Ordinary of the new domicile?

A. Affirmative.

Q. Do the faculties which a confessor, or which the Holy Penitentiary, or which his own Ordinary may have granted, or delegated, by way of habit, for the internal forum, and in the actual administration of the sacrament of confession, that is, either all of them, or a part of them, which the Holy Penitentiary is accustomed to grant to bishops, continue to be valid even during the time of the Jubilee?

A. Affirmative.

Q. What is to be done with those who, before having completed the prescribed visits, change their domicile or quasi-domicile, for reasons such as, for example, office, service, marriage, or any other cause?

A. The works begun in one place can be completed in another, where one must live by reason of office, service, or marriage.

[*Latin ed. p. 487*]

487 FROM THE SACRED CONGREGATION FOR INDULGENCES: A certain Ordinary, having prostrated himself before the Most Holy Lord Pope Pius IX, revealed the following: To the Sacred Congregation for Indulgences, the Bishops inquired whether, during the time of the Jubilee, they could solemnly bestow a blessing upon the people and grant them a plenary Indulgence in the name of the aforementioned Holiness. In response, on December 24th of the year 1824, it was answered: Negatively. Therefore, the aforementioned Ordinary inquired of the same Sacred Congregation: I. Whether this negative response applies to those very blessings, even during the recently proclaimed Jubilee. II. He requested that, if this response pertains to the aforementioned blessings, he might nevertheless be permitted to grant the customary Papal Blessing with a plenary Indulgence to the faithful of his own Diocese during this very year of the Jubilee.

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The Sacred Congregation, entrusted with Indulgences and Sacred Relics, deemed it fitting to respond on April 8th, 1875: To I. Negatively, according to the Decrees of December 24th, 1874. To II. As provided in the first. I. CARDINAL FERRERI, Dominic, Prefect. Sarra, Substitute. The Auxiliary Bishop, having prostrated himself humbly before the Most Holy Lord Pope Pius IX, explained: In the Apostolic Letters concerning the granting of a plenary Indulgence, it is stated that...

[*Latin ed. p. 488*]

488. The decree concerning indulgences, joined with charity in this life, may, by way of suffrage, be applied and be efficacious; from which words, the following doubt arose: Whether a faithful person, having fulfilled the necessary conditions for gaining a Jubilee, may apply a plenary indulgence for the soul of a deceased person, and at the same time obtain the same indulgence for himself. From an audience of the Most Holy Father on April 25, 1875, His Holiness benignly declared that the Jubilee indulgence may be gained cumulatively, both for oneself and for the deceased. I, CARDINAL PERRIERI, Dominic, Prefect of the Substitute.

[*Latin ed. p. 489*]

FROM THE HOLY CONGREGATION OF RITES. Naples. Decree whereby the canonical rights of the Metropolitan Church of Naples are confirmed concerning the celebration of the Conventual Mass in the presence of the Most Eminent Cardinal Archbishop. DECREE: It appeared that the controversy, which had long existed between the aforementioned Canons on the one hand and the hebdomadaries on the other, concerning the right to celebrate the Conventual Mass in the presence of the Most Eminent and Reverend Cardinal Archbishop, had reached its end through an agreement initiated on May 11, 1700, between the Most Reverend and Most Reverend Lords, Canons, and hebdomadaries of the Metropolitan Church of Naples. However, this was not the case; and the hebdomadaries repeatedly attempted to undermine that agreement, although it had been concluded with their consent, approved by the Reverend Diocesan Ordinary, and confirmed by the Congregation of Sacred Rites by decree on September 16, 1702. The matter reached such a point that the Canons were forced to appeal to the Archdiocesan Ecclesiastical Court in order to protect their rights, which, on February 28, 1838, and again on May 14, 1872, upheld the validity of the aforementioned agreement. Despite this, the hebdomadaries recently insisted before the Sacred Congregation of Rites in a written petition that the aforementioned agreement be declared invalid. The Sacred Congregation, therefore, first requested an opinion from the Most Eminent and Reverend Cardinal Archbishop, and then instructed him to inform the Canons of the hebdomadaries' petition, so that they might transmit to the Sacred Congregation what they considered

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appropriate for defending their own rights. After this, a place for doubt was created regarding the agreement. Indeed, since the parties did not agree on the matter, it was, by its very nature, necessary to determine: Whether the agreement should be observed.

[*Latin ed. p. 490*]

On the 11th day of May, 1700, and by the Decree of the Sacred Congregation of the same date, or rather, it is to be followed that the Decree of the Sacred Congregation of the 26th day of September, 1682, in the case where the Sacred Congregation itself, having heard both parties, both verbally and in writing, and having considered the rights presented from both sides; in response to the report of the Most Eminent and Reverend Cardinal Cannili Di Pietro, Promoter of the Cause, on the 7th day of February of the present year, it was written: "Having judged on the 28th day of February, 1838, Affirmative with respect to the first part: Negative with respect to the second. However, at the request of the Hebdomadariorum, by virtue of a new hearing obtained by them, the Cause was again presented by the same Most Eminent Promoter under the same Doubt, and after again hearing both parties, and after considering new rights presented. The following Rescript was issued: "In the decisions and further." And thus it was decreed and ordered to be observed. On the 28th day of November, 1874. L. S. C. E P. OSTIEN. ET VELITERN. CARD. PATRIZI S. R. C. Prefect. D. Bartolini S. R. C. Secretary.

[*Latin ed. p. 491*]

49l Vercelli, or Trino. The cult of confirmation has been diligently practiced from time immemorial, dedicated to the Servant of God Oglerio, a monk of the Cistercian Order, abbot of the monastery of Locedio, near Trino, in the Archdiocese of Vercelli, now called Blessed. DECREE: In the Ordinary Assembly of the Congregation of Sacred Rites, convened at the Vatican, with the presence of the Most Reverend Monsignor Emiliano Manacorda, Bishop of Fossano, and promoter of this cause, and the Most Eminent and Reverend Cardinal Aloysius Billio, also promoting this cause, the following question was proposed: Whether the judgment of the judge delegated by the Most Reverend Vicar Capitular of the Archdiocese of Vercelli, should be confirmed in the case and for the purpose in question? The aforementioned Sacred Congregation, after mature deliberation, and having heard the voice and written opinion of the Reverend Father Monsignor Lawrence Salvati, Promoter of the Holy Faith, decided to respond: Affirmative. On March 20, 1875. These matters, faithfully reported to the Most Holy Pope Pius IX through the undersigned Secretary, were ratified and confirmed by His Holiness. On April 8 of the same year. CONSTANTINUS, Bishop of Ostia and Velletri. CARD. PATRIZI, S.R.C., Prefect of the Place

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of the Seal of Piety. Rolli, S.R.C., Secretary.

[*Latin ed. p. 492*]

The Cult of Confirmation pertaining to the Order of Preachers, which was rendered to the Servant of God, Christopher, a priest of the diocese of B[arletta], professed in the Order of Preachers, now Blessed, was examined. DECREE: In the Ordinary Assembly of the Congregation for Sacred Rites, convened at the Vatican, at the request of the Reverend Father Vincent Acquarone, a priest professed and General Postulator for the causes of beatification and canonization of the Servants of God of the Order of Preachers, and with the proposal of the doubt presented by the Most Reverend and Most Eminent Cardinal Aloysius Oreglia of Saint Stephen, promoter of this cause: Whether the sentence of the delegated judge, issued by the Most Reverend Bishop of Ventimiglia, concerning the aforementioned cult rendered to the Servant of God, or concerning the exception from the Decrees of the Holy Father Urban VIII, should be confirmed in the case and for the purpose in question. The Sacred Congregation, after mature deliberation, and having heard the Reverend Father D. Lawrence Salvati, Promoter of the Holy Faith, deemed it fitting to respond affirmatively. On March 20, 1875. These matters, faithfully reported to the Most Holy Pope Pius IX through the undersigned Secretary, were ratified and confirmed by His Holiness. On April 3rd of the same year.

C. EPISCOPUS OSTIEN. ET VELITERN.

CARD. PATRIZI

S. R. C.
PRAEF.
(Place for Seal)
Piae Ralli
S. R. C.
Secretarius.

[*Latin ed. p. 493*]

493 APOSTOLIC LETTERS TO THE VENERABLE BROTHERS OF THE CATHOLIC CHURCH OF UTRECHT, TO ANDREAS AND TO ALL THOSE IN THE DIOCESE UNDER HIS JURISDICTION, AND TO THE BELOVED SONS, THE ARCHBISHOP, GREETINGS AND APOSTOLIC BENEDICTION. PIUS IX, POPE. Venerable Brothers and Beloved Sons, greetings and the Apostolic Benediction. In the entire Church of God, we must devote all our concern to safeguarding and defending the Catholic faith and unity, since we are constituted for this supreme apostolic

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ministry. Moved by this concern, We have considered it necessary to send these letters to you, Venerable Brothers and Beloved Sons. We have learned from a letter sent to Us last month, signed by Cornelius Johannes Mulder, who calls himself the dean of the pseudo-Chapter of Utrecht, and by Henricus Loos, who, by the schismatics of Utrecht, was rashly, vainly, and erroneously elected archbishop, and who was illicitly, illegitimately, and sacrilegiously consecrated, and therefore, along with his electors and consecrators, was excommunicated by a greater excommunication by this Holy See, and was also forbidden from exercising any jurisdiction pertaining to his order, and who, having departed this life, has been replaced by another, named Johannes Heyka, who has been substituted for the pseudo-Canons of Utrecht, and who was elected archbishop of Utrecht on December 15th of the past year. Moreover, those aforementioned Jansenist adherents of schism and error, with the utmost hypocrisy, as if they were within the bosom of the Catholic Mother Church, which they are tearing apart, have, through their letters which they sent to Us concerning this election, sought to obtain confirmation of the same elected [archbishop] from Us. We, Venerable Brothers and Sons, have received the news with great compassion, as recounted in *Acta* Tom. VIII, page XIII, 32.

[*Latin ed. p. 494*]

494 LETTERS TO THE ECCLESIASTICAL FATHERS. Grieving over the death of that pseudo-Archbishop of Ultraiect, which occurred not before his obstinacy than his life, and deploring the unhappy fate of those associates of his in the same schism and errors, who, undeterred by divine judgments, persist in their contumacy. Indeed, perceiving this grievous obstinacy of spirit in them, by which they seek to tear the seamless garment of Christ and despise the punishments inflicted upon them by those similar to themselves, moved by the apostolic office and the sacred laws of the canons, so that those who are unwilling to return to health may at least be repelled by others, following in the footsteps of Our Predecessors, who exercised all judgments against such elections and other contumacious acts, We declare, with the authority of the Holy See, that the election of John Heykamp as pseudo-Archbishop of Ultraiect by the pseudo-Canons of Ultraiect is null, void, illegitimate, and sacrilegious, and We annul, abolish, and reject it. Furthermore, under pain of excommunication, incurred by this very act and without further declaration, We strictly command that the aforementioned Heykamp abstain completely from all those things which are proper to the Episcopal jurisdiction. Therefore, it will never be lawful for him to appoint or designate anyone for the care of souls or the administration of the sacraments, under any pretext whatsoever, nor to do anything else that pertains to the Episcopal jurisdiction, which he entirely lacks. Moreover, under the same penalty of excommunication, incurred by this very act and

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without further declaration, We command both the aforementioned John Heykamp not to receive consecration from any Archbishop or Bishop, as well as the pseudo-bishops from his own group and other Archbishops or Bishops, not to dare to consecrate him as that empty and abominable pseudo-Archbishop. We impose these penalties without prejudice to those which both the elected pseudo-Archbishop and the pseudo-Canons of Ultraiect may have incurred. While We write these things to you, Very Reverend Fathers, Very Dear Fathers, so that We may fulfill the parts of Our apostolic concern, We also urge you to add your fervent prayers to Ours, that God...

[*Latin ed. p. 495*]

LETTERS APOSTOLIC! We, moved by your earnest entreaties, deign to bring those who are unfortunately erring to the fold of Christ and to the port of salvation. May the Clemency of God inspire you, that you may finally seek true peace and consolation; which can only be found in God and His Church, and that, moved by piety towards yourselves, if you hear the voice of the Lord, you may not harden your hearts. To you, Very Reverend Fathers and Very Dear Sons, confirming our special and sincere benevolence, and imploring the most abundant gifts of divine graces from the Lord, we impart the Apostolic Blessing with all the affection of our heart. Given at Rome, near St. Peter, on the 31st of March, in the year 1875, in the Twenty-ninth year of Our Pontificate. PIUS IX, POPE.

[*Latin ed. p. 496*]

To the most beloved son, Alphonse Travaglini, Doctor of Medicine and Surgery, Founder of the Philosophical-Medical Society (1), Pope Pius IX sends greetings and his Apostolic Benediction.

Beloved Son, greetings and Apostolic Benediction. During the past month of March, we received you, beloved son, together with the priest John-Mary Cornoldi of the Society of Jesus, whom you had used as your most trusted advisor and helper in establishing the aforementioned Society, and with other distinguished men devoted to the same cause. We congratulated you, because you had decided to bring back the science of medicine, which had long strayed from the principles of sound philosophy, to those principles, and to restore the correct doctrine concerning the essence and origin of things, especially concerning man, around whom medicine revolves: so that a remedy might be found from which evil might be largely removed. We rejoice that the auspicious signs of the present have responded to our hopes, and that more than Cento learned Italians have already given their names to the recently founded Society, and that even greater growth is being prepared for it. We are also pleased to see that you, faithful to your purpose, have decided to admit only those as members who hold and defend the doctrines proposed by the Holy Councils and

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by this Holy See, and in particular, the principles of the Angelic Doctor concerning the intellectual union of the soul with the human body, and concerning substantial form and prime matter. Indeed, only in this way can the damage caused to religion and science by materialism be repaired, or can science itself be rescued from... (1) Such letters could not be neglected; for they are the same as those which we presented on page 429 of this volume.

[*Latin ed. p. 497*]

APOSTOLIC LETTERS 4-97: To be extricated from the snares of error, and to progress towards the truth, nothing is more necessary than the truth itself. And since this truth proceeds from God, as is clearly and most safely taught by theology, it cannot in any way be at odds with the disciplines of philosophy and physics; thus, while it may seem that the minds of men are being drawn towards obedience to faith, at the same time, science is advanced in its solidity, explanation, and progress, and the man, shamefully entangled with the beasts in materialism, is raised up to the dignity of the sons of God. Therefore, take care that you admit none among you from the ranks of those who follow new opinions, who, puffed up with the appearance of learning, gradually sow discord among you, and lead minds away from the authority of the teaching of the Church, in which alone the infallible Chair of Truth has been established by the Lord Christ. If you persevere in the undertaking, if you diligently avoid the deceptions of false brothers, if all are inspired by the same love of religion, striving to attain, to illuminate, and to spread the truth, you will certainly merit the best from the Church, from science, from sacred and civil society, and you will see your association, with the brief addition of many wise men and the approval of all honest people, commended. These things we implore you; and in the meantime, as a pledge of divine favor and of our paternal benevolence, to you, beloved son, and to all members of the Philosophical-Medical Society of Saint Thomas Aquinas, we impart the Apostolic Blessing with all our heart. Given in Rome, at Saint Peter's, on the 23rd day of July, in the year 1874, in the nineteenth year of Our Pontificate. PIUS IX, POPE.

[*Latin ed. p. 498*]

498 FROM CONSISTORY ACCOUNTS: NOMINATIONS OF BISHOPS. The Most Holy Lord N., in a secret consistory held on July 5, 1875, after the Most Eminent and Reverend Cardinal Bizzarri requested to relinquish the title of Saint Jerome of Illyria and to receive the title of Saint Balbina, proposed the following churches: The Patriarchal Church of the West Indies for the Reverend Father D. Francisco di Paola Bonavides y Navarrete, already Bishop of Segovia; The Metropolitan Church of Toledo, for the Most Eminent and Reverend Cardinal John Ignatius Moreno, holding the title of Saint Mary of Peace, transferred from the Church of Valladolid; The

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Metropolitan Church of Messina, for the Reverend Father D. Joseph Guarino, transferred from the Church of Syracuse; The Archiepiscopal Church of Larissa, in the parts of the infidels, for the Reverend Father D. Francis Mary Benjamin Richard, transferred from the Church of Bellici, which he continues to administer, and appointed as Coadjutor with future succession, the Most Eminent and Reverend D. Cardinal Joseph Hippolytus Guibert, Archbishop of Paris; The Metropolitan Church of Syracuse for the Reverend Father D. Benedict La Vecchia Guarneri, of the Order of Saint Francis, transferred from the Church of Noto; The Metropolitan Church of Bamberg for the Reverend Father D. Frederick Schreiber, a priest of the Diocese of Augsburg, parish priest in Engelbrechts-Münster, and Inspector in the schools of the Territory of Landesberg; The Metropolitan Church of Saint James of Cuba, in the Americas, for the Reverend Father D. Joseph Mary Martin d'Her.

[*Latin ed. p. 499*]

FROM THE CONSISTORY ACTS, 409 concerning the Church: To the Priest of the Diocese of Salamanca, Dean of the Cathedral of León, Doctor of Sacred Theology and of Canon Law. To the Cathedral Church of Málaga, for the Reverend Father Stephen Joseph Pérez y Martínez Fernández, already elected Archbishop of Tarragona; To the canonically united Cathedral Churches of Trieste and Justiniana Prima, for the Reverend Father George Dobrila, transferred from the Parentin and Pola Churches; To the Cathedral Church of Mindon, for the Reverend Father Francis of Sales Crespo y Baulista, transferred from the Church of Archis in the lands of the infidels; To the Cathedral Church of Włocławek, for the Reverend Father Vincent Theophilus Poppiel, transferred from the Church of Płock; To the Cathedral Church of Saint Martha in Nueva Granada, for the Reverend Father Joseph Romero, transferred from the Church of Díbón in the lands of the infidels; To the Cathedral Church of Córdoba, for the Reverend Father Zephyrinus González y Díaz Túnon, Priest of the Diocese of Orihuela, a professor from the Order of Preachers of Saint Dominic, a Synodal Examiner of many Dioceses, a Doctor of Philosophy as well as of Sacred Theology, elected, and the Delegate of the Church of Málaga; To the canonically united Cathedral Churches of Châlons and Perugia, for the Reverend Father Aloysius Raphael Zampetti, Priest of the Diocese of Lauretana, a Canon Theologian, a Parish Priest, a Capitular Vicar of Perugia, a Synodal Judge in his Diocese, a Doctor of Sacred Theology and of both Laws; To the Cathedral Church of Nete, for the Reverend Father John Blandini, Priest of the Diocese of Calatayud, a Parish Priest, a Doctor of Sacred Theology and of Canon Law; To the Cathedral Church of Reggio-Gracilia, for the Reverend Father Joseph Hais, Priest of the Diocese of Budweis, a Canon, a Synodal Examiner, the Rector of a Seminary, a defender of marriages, and a Doctor of Sacred Theology; To the Cathedral Church of Bellici, for

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the Reverend Father Joseph Marchi, a Presbyter of the Diocese of Saint Deodatus, and the General Vicar of that Diocese.

[*Latin ed. p. 500*]

500 FROM THE CONSISTORY ACTS: The Cathedral Churches canonically united with Galagurris and Calceatae for the Reverend Gabino Catalina del Amo, Priest from the Diocese of Segovia, Canon, Licentiate in Sacred Canon Law, and Doctor of Holy Theology; the Cathedral Church of Legión for the Reverend Saturnino Fernandez de Castro, Canon, Rector of the Seminary, and Doctor of Holy Theology; the Cathedral Church of Santander for the Reverend Vincent Calvo y Valero, Canon, and Doctor of Holy Theology; the Cathedral Church of Puno in the Republic of Peru for the Reverend Peter Joseph Chavez, Pro-Synodal Examiner, and Doctor in Holy Theology; the Cathedral Church of Aurea in the lands of the infidels for the Reverend Vitale Galli, Priest from the Diocese of Cagli, Pro-Synodal Examiner, Capitular Vicar, Doctor of Philosophy and of both Laws, and Coadjutor with future succession to the Most Reverend Father Hyacinth Luzzi, Bishop of Narni; the Episcopal Church of Gerra in the lands of the infidels for the Reverend Victor Joseph Doutreloux, Priest from the Diocese of Liège, Canon, General Vicar of that Diocese, Rector of the Great Seminary, Doctor of Holy Theology, and Coadjutor with future succession to the Most Reverend Father Theodore Joseph de Montpellier, Bishop of Liège. After these matters, the Most Holy Father announced the following appointments, made by Papal Brief: the Metropolitan Church of Cassilia in Ireland, conferred upon the Most Reverend Thomas Croke, transferred from the Church of Aukopolitan; the Archiepiscopal Church of Adana in the lands of the infidels, conferred upon the Reverend Ambrose Notyn Darauni, General Procurator of the Maronite Congregation; the Archiepiscopal Church of Abdera in the lands of the infidels, conferred upon the Reverend Richard Roksell, already Bishop of Nottingham; the Episcopal Church of Marcopolitan in the lands of the infidels, conferred upon the Reverend Paul Durien from the Congregation.

[*Latin ed. p. 501*]

I.X. A.C. (Ossisi Okialitus 501) Oblate of the Most Holy Mary Immaculate, Coadjutor Delegate in the Apostolic Vicariate of British Columbia, to Aloysius Joseph d' Hosbonnez, Metropolitan Bishop in the parts of the infidels. Furthermore, the Consistorial Advocate, who requested the Holy Pallium for the Metropolitan Churches of Toledo, Messina, Syracuse, Bamberg, St. James of Cuba, and Cassilia, received this response from the Most Holy Father: "We shall grant it shortly."

[*Latin ed. p. 502*]

502 FROM THE SACRED CONGREGATION FOR THE CATHOLIC TRUTH, DECREE, May 1st, 1872. Summary of the case. In the town of G.,

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in the Diocese of N., there is a church which is the oldest of all the churches. From time immemorial, this church, besides the clergy serving therein, was endowed with four offices, namely, an Archpriest with the care of souls, an Archdeacon, a Cantor, and a Primicerius. It is unclear what was preserved in this church in past centuries; but it appears that in the year 1626, in order to increase the number of clergy serving, it was decided to admit only twenty canons, in addition to the aforementioned offices. For this purpose, the Bishop who was then exercising the Sacred Visitation was consulted, so that he might give his approval; which he undoubtedly gave, considering that it would be beneficial for the increase of divine worship. At the same time, certain statutes were drawn up concerning the qualities and promotion of the canons. Among other things, it was found to be stipulated "that progress should be made gradually, and that this" should be understood to apply to the canons, and not to the offices, with regard to the creation of the aforementioned canons; that the canons of this" town should be citizens, and not foreigners... Up to the year 1674, the records show that matters did not proceed peacefully concerning the right of succession. Indeed, in the year 1663, a question arose before the Sacred Rota. And in the year 1674, it is read in the records that, in order to settle the disputes, disagreements, and litigations which had been long and costly, it was unanimously agreed by the Bishop, the offices, and the canons to admit twelve other priests as resident canons, with the following condition:

[*Latin ed. p. 503*]

JURISDICTION. – CANONICAL POSSESSIONS. Canon 503 stipulated that those chosen by the Bishop for the first time should hold their positions; afterwards, upon the death of each, others from the clergy would succeed according to the order of their prior reception into the priesthood, by their own right, without any new appointment or declaration. A decree of concord was issued by the Bishop at the time of the Visitation, and the Sacred Congregation added its support by writing to the Bishop on May 21, 1675, stating that "Most Eminent Fathers, they considered that such a concord tended to the increase of the divine cult and should be confirmed." This was subsequently confirmed by several Bishops; and it appears that a certain practice arose whereby those admitted to canonical positions according to the order of seniority were chosen to fill vacancies. And in this manner, matters continued until the year 1818, when, through an agreement initiated between the ecclesiastical and civil authorities of that jurisdiction, the Church of the town of G. was granted the dignity of a Collegiate Church. Afterwards, the Bishop of that time considered that the agreement applied to the appointment of canons and beneficed clergy, both to the Bishop and to the Holy See, in accordance with Article 10 of the agreement. Hence, through a letter urging him, the Archpriest offered

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several benefices, and then, with no one claiming them, he availed himself of this right in other vacancies, although he always named those according to the order of seniority. However, the Bishop who presided over the Diocese in the year 1859 decided to abandon the order of seniority, promoting two priests; this promotion displeased the Chapter of G.; and its procurator issued protests before the Episcopal Court against such a promotion. The Bishop, bearing this ill, suspended from divine duties, based on informed conscience, the main authors of the protest, who were three in number, and condemned them to retreat to a religious house so that they might dedicate themselves to spiritual exercises. Regarding this matter, an appeal was immediately made to the Sacred Congregation, which, in March 1860, replied to the Bishop, for his information, and requested a vote, and that he report on the reasons for the imposed suspension, transmitting a copy of the decree, and other documents relevant to the matter. However, this question, due to political disturbances,

[*Latin ed. p. 504*]

504. The canonical institution for the conferral of benefices had ceased until the year 1870; and this matter, having been brought before the Sacred Congregation, a letter was transmitted, in which the Chapter, renewing its former request, petitioned "that priests serving in the locality be admitted to participation, according to the order of seniority, without any faculty of election in the Ordinary, while retaining the rights of collation pertaining to the Sacred See." Upon receiving this as a new petition, the Sacred Congregation responded: "Let the Bishop be heard regarding the matters presented; who, in turn, responded on December 15, 1871. He stated, first, that the Church of G. had been recognized, by the aforementioned agreement between the ecclesiastical and civil authorities, as a true Collegiate Church on August 23, 1842. And he continued: "In virtue of this recognition and of Article 10 of the Concordat, by which it was established that canonical benefices, both of cathedrals and of collegiate churches, should be conferred alternately by the Holy See and by the Bishops for a period of six years; the Ordinary of F., his predecessor, in the year 1843, conferred eight canonical benefices, which he considered to be within his power. In the year 1848, he said, the Ordinary of G. conferred a canonical benefice upon a priest of G.; and finally, in the years 1850, 1854, and 1859, he conferred one dignity and five canonical benefices. He also stated that matters had proceeded quietly until the year 1859; and in the year 1860, certain officials of that Church (the same who made recourse to the Sacred Congregation) issued a protest against him in the name of the Chapter, concerning the conferral by him of two canonical benefices. This protest was not recognized by the Chapter, in whose name it was said to have been made. Furthermore, the Ordinary stated that those officials, and others numbering thirteen, had themselves assumed canonical insignia, and had

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styled themselves canons without any canonical institution. However, from the letters presented, now in the name of the officials, now in the name of the Chapter, and also from the letters of information from the Ordinary, one might perhaps doubt whether the Chapter, or some of the officials in the name of the Chapter, were fostering such a dispute. Therefore, on January 27, letters were sent to the Bishop, requesting that the canonically instituted canons state, whether they had been mandated—

[*Latin ed. p. 505*]

JURIS CONSULTI CANONICATUS OMNINO DEDERUNT AD LITEM INSTITUENDAM. Capitulum, sub die 26 Februarii 1871, capitulariter collectum, retulit, causam non fuisse a legitimis canonicis introductam, sed a Mansionariis qui se canonicos nominaverunt. Verumtamen die sequenti, iterum collecto Capitulo, in maiori numero decretum fuisse, sustinendum esse recursum ad S. C. Congregationem. Hisce omnibus absolutis, sub die 11 Maii 1871, rescriptum editum fuit: « Ponatur in folio, et notificetur Episcopo causam proponendam esse in plenis comitiis, ideoque liberum ipsi esse infra terminum quadraginta dierum deducendi ulteriora iura sua per Promotorem Fiscalem Curiae coram S. Congregatione, et moneat Capitulum, ut infra praedictum terminum deducat pariter iura sua, quatenus velit. » Disceptatio succincta. EA QUAE PAVORE CAPITULI ET MANSIONARIORUM PROSTANT. Orator Capituli et Mansionariorum, antequam intima causae momenta attingeret, obiectionem reiecit ex recenti Capitulorum clade ac bonorum publicatione desumptam, quasi idcirco disputandum non esset de successione ad Canonicatus qui evanuerunt. Attamen primo in iure Collegium non desiisse probavit ex Piton, *Discip. Eccl.* 8 n. 17. In facto autem nihil obsistere quominus Capitula coetus habeant, functiones peragant, ut antea, et ecclesiastica iura exerceant. Re autem vera etiam post bonorum publicationem Episcopus novos in titulum huius Ecclesiae Sacerdotes adlegit. Tum quidquid sit de praebenda, hodie de canonia disputatur quae ab illa differt iuxta Piton, *Discip. Eccl.* 17 n. 14, nec umquam esse desiit. Accedit quod maxima actorum pars in hoc iudicio omnino dimicare cogitur ne pensionem amittat. Ante publicationem bonorum plerique ex hodiernis canonicis non Episcopi collatione, sed anterioritatis ordine successerunt, idcirco anno 1860, ante bonorum publicationem, lis exarserat. Si iuxta Episcopi propositum, ut canonici actores agnoscendi non essent, plane sequeretur pensionem eis adimi debere. Omnino igitur disputandum contendit de iure succedendi, a quo pendet validitas admissionum.

[*Latin ed. p. 506*]

506. CONFLICT OF CANONICAL LAWS. The orator stated: ”Here belongs, with respect to the Bishop, another exception, namely, that those who are acting do not possess the legitimate standing to bring a case before

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the court, since they were not elected by the Bishop; and that a majority of the Chapter disagrees with the matter at hand." However, this disagreement of the majority is tainted, because when the Holy Order commanded the Chapter to be convened so that the truth might emerge, more than twenty individuals, partly canons and partly mansionaries, ordered the case to proceed. Only six adhered to the Bishop. It was considered absurd to dispute the legitimate standing of those acting, because the Bishop himself had previously defined that he was the one who had the authority to decide whether the Chapter or the canons should be admitted. Furthermore, this objection never applied to the mansionaries, for whom it was of the greatest interest that the right of succession be confirmed. Having stated these premises, he proceeded to the matter at hand, proposing the question of whether vacant benefices should be conferred by the Bishop, according to custom, or whether they should rather be filled by the mansionaries, according to the law of seniority. In this, he considered two things above all: that this practice has been in force by perpetual custom; and that custom is founded on the principles of law. To demonstrate this custom, he presented declarations issued by the Church in the year 1626, stating: "In the promotion of any canon, proceed step by step, and 'Me coadiuvatur ad quem promotio spectabit'." He also presented the testimony of Cardinal De Luca, who stated that this was the established practice for the Church of G. in Discourse 19 on Canon Law, number 1. He also presented a concordat approved by the Holy Congregation in the year 1676, which decreed that priests should "succeed according to the order of seniority." He added the total judgment of the year 1712, which judged that "no right belonged" to the Bishop to admit priests to benefices, but that this right "belonged and belongs to the Chapter and the canons of the distinguished collegiate church." Then, proceeding up to our own time, he demonstrated that the nominations of the Chapter were always given precedence. Thus, he presented the custom, the concordat, and the settled matter.

[*Latin ed. p. 507*]

The question of conferring canonical offices had arisen, and, safeguarding the intrinsic justice of the matter, he argued before the assembly of presbyters that the senior members had the right to promote candidates, according to Canon Law, district 16, and he demonstrated this with the judgment of the Sacred Congregation. Indeed, in a transaction initiated in the year 1765, "The Fathers of the Council praised and confirmed such an agreement, as tending to the increase of divine worship." And the advocate argued from various testimonies that all bishops were obligated by the transaction which the Holy See had confirmed in a specific form. Then, he completely refuted the sole objection raised by the bishop, concerning the changed laws and rights of the College after the year 1842. For the bishop stated that the Convention of the year 1818 had ordered that "canonical

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offices be conferred freely in chapters, or cathedrals, or collegiate churches, respectively, by the Holy See and by the bishop." And he claimed that this applied to the Church of G., which in the year 1842 was recognized as a true collegiate church. First, the defender of the chapter pointed out that the article of the Convention in question stipulated nothing other than what the Council of Trent had sanctioned, namely, that the conferring of benefices belonged to the bishops. However, he maintained that this did not abolish the rights of the lower clergy, if they were supported by justice and custom. Nor, he said, did the executors of that Convention intend to abolish all customs. But, although in general the Convention derogated from customs, nevertheless, he maintained, first, that the Convention did not affect churches that were received [into a college]; second, that it concerned only the conferring of offices and benefices, and by no means admissions to participation; third, that it could not abolish the rights of patronage. And, first, with regard to this, the chapter of G. proposed to retain both its status as a received church and its collegiate character even after the act of the year 1842. And, he said, it was not new for a double status to exist in colleges of that kingdom, as observed by Cardinal De Luca in *De Canon.*, discourse 17, number 1, and discourse 18, number 1, where a small number of dignities or canons constituted a true collegiate body, and each had what was due to them; the others, participating in the common fund, belonged to the collegiate church. And, as Cardinal De Luca recounts in *De Canon.*, discourse 19, this occurred in the Church of G. But there was nothing in the concurrence of a double status that...

[*Latin ed. p. 508*]

508 "CONFER JURA!" The Advocate maintained, in the year 1842, that the decree had not altered the established order. Indeed, he had not introduced anything new, but had recognized and confirmed what was already the case, with these words: "The Church has been recognized as a Collegiate Church." Therefore, he argued, the true chapter remained in the Dignities, and the participation remained valid. He illustrates this with an example. In the case of the Oritma participation of March 6, 1847, when the nature of the College was being debated, the Sacred Congregation requested the Apostolic Nuncio to provide information. However, although the Executors' Conventions had decreed: "The Church of SS. Trinitatis in the town of M. has been recognized as a true Collegiate Church," he clearly explained how the concurrence of both qualities could occur, concluding: "The Church of M. presents the nature of a collegiate church erected in a pre-existing church, and to it remains attached and annexed the same participation." Secondly, he argued that the Convention could not be applied to this case, because it dealt with "canonical institutions of free collation." He stated that collation is not permitted unless the nature of the benefice is proven, as stated in *Corrad. in prax. benef. lib. 1 cap. 2*: and that the

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Chapter's participations are not benefices conferred in title. This was clearly stated in 1626 by Bishop N., when he defined the number of canons as "those who are examined without a title of collation." He also pointed out that there has never been an institution of benefices that did not involve a portion, which is clearly confirmed by the fact that in that Chapter, the "common fund" participation has always existed. But where there is no division of goods, there is no provision to be made, and only a portion can exist. *Barbosa de Canon. cap. 12 n. 3; Piton, disc. eccl. 17 num. 36.* Therefore, the Advocate concluded, the provision of portions could not have been changed after the year 1842, because benefices and collation have always been absent. Finally, he argued that the article of the Convention did not apply to the case, since it dealt with canonical institutions of free collation, which is entirely different from the omissions that derive from justice and patronage. This right had not been overturned, as is evidenced by the interpretation issued immediately after the Convention, with these words: "The same Patrons, whether ecclesiastical or lay, who were sent and recognized under the last Concordat of Patronage, are confirmed in their particular rights of patronage."

[*Latin ed. p. 509*]

The canonical right of patronage is not only established by title, but also by ancient possession, as stated in the text of the Holy Council of Trent, in chapter 9 of Session 25 concerning Reforms. This right is derived from justice, according to Gagliard., in *De Patronato*, chapter 4, numbers 1 and following. Nor does the absence of a title present an obstacle, for it is a well-established principle that, if the foundation is proven, it is considered valid, as testified by the Rota in decision 172, numbers 1 and following, before Buratto. Therefore, the evidence in favor of the Chapter is abundant, because it has been presented for two centuries and more.

Having considered these points against the objection of an abrogated right, another matter concerning recent events is to be examined. The Bishop stated that he had offered positions after the year 1842, without the Chapter's consent. The Advocate responded that first, the list of nominations issued by the Bishop should be corrected, so that these appointments do not exceed the four-year limit stipulated by law. Subsequently, the Chapter protested. In law, this action can be either an interpretation or a prescription. However, it is impossible to deny the validity of the interpretation, and nothing is more evident than the fact that these positions are not benefices and cannot be conferred. Furthermore, he added that the Chapter had remained silent for twelve years, and that it was deterred by threats and the example of suspensions, as he stated. If this action is to be considered a prescription, it is argued that it is absurd to claim that a prescription can be established in twelve years, as the Rota noted in *Neritonen*, decision 2, number 9, before de Vais.

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Finally, whatever the Bishop may present on this matter, it is possible that it can be considered valid by custom. For the force of custom lies in the fact that, in the same circumstances, the same thing has been repeatedly and for a long time done in the same way as it is now being done. However, for twelve years, while the Bishop appointed individuals, always admitting those who, according to the order of seniority, were legally entitled, the Chapter could not prove that the Bishop was encroaching on another province, but it had not relinquished any claim to the passive patronage. However, in the year 1859, the Bishop wished to admit outsiders, and the Chapter opposed this. The twelve-year custom did not benefit him in any way, but clearly excluded the admission of outsiders. *Acta*, Volume VIII, page 18, number 33.

[*Latin ed. p. 510*]

5. OF THE CANONICAL PROVISIONS OF THE COUNCIL, THOSE WHICH THE ECCLESIASTICAL COURT HAS DECREED TO BE INVALID.

The following provisions, having been declared invalid by the Episcopal Court, are presented: namely, that the entire Chapter and its officials were present, so that they might, if necessary, assert the validity and efficacy of the statutes of their Church in the present matter. However, if it should be proven that these provisions were null and void from the beginning, and that they could not have become valid over time, then it is necessary for them to be annulled. Indeed, it seems impossible to doubt that such provisions were null and void, especially in relation to the matter at hand. Certainly, statutes that exclude outsiders and admit only citizens, maintaining only the order of seniority, are contrary to common law. Therefore, the Rota, in decree 290, number 2, page 2, and in decree 710, number 4, before Manzanedo, holds that such statutes are not valid. Yet, these are the very statutes that are being presented and defended.

One might argue that the Bishop's authority was involved in the creation of these statutes. However, the authority of the Bishop is of no effect in matters that are openly contrary to common law, unless the confirmation of the Apostolic See intervenes. Moreover, when it is a matter of excluding priests who are not members of the Chapter and who do not possess civic status, and therefore of excluding, by way of regulation, a certain class of persons, the confirmation of the Holy Father is required. De Luca, in *De iure patr.*, discusses this in section 67, number 12.

It is, however, futile to argue that the confirmation of the Holy Father was obtained in this matter in the year 1674 through the Sacred Congregation. For that confirmation did not pertain to the statutes concerning the promotion of Canons and the right of succession, but rather to the agreement reached between the Bishop, the dignitaries, the Canons, and the priests of the city of G., in which fourteen additional presbyters were admit-

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ted as members, and in which the order to be observed in such admissions was discussed, but nothing was said about admission to the Canonicate. Therefore, it is completely irrelevant to the matter at hand.

Thus, since the matter is invalid from the beginning, it is improper to invoke custom in its defense. For custom is valid only in matters that are not contrary to the law.

[*Latin ed. p. 511*]

The canonical institution, once proven, cannot be abrogated, even if it is not memorable; but it must continue to subsist, and therefore, one cannot presume an apostolic approval in a disposition contrary to the law, which is never presumed. Therefore, since the statutes, from the very beginning, have been null and void, and to which the Chapter and the Mansionaries cling with all their might, their edifice must necessarily collapse. It is not the case that the quality of collegiate status was not conferred upon them at that time, but rather that it was only recognized; hence, no change of status, and no loss of rights, has been brought about: 1. because it is false that it had previously been established as a collegiate, as is evident from the decree before Taja; 2. because even with this small concession, the right to choose always passed into effect with the article 10 of the convention entered into between the civil authority and the Holy See, where the aforementioned abrogation of rights is openly sanctioned. Indeed, the words "Canonical institutions of free collation in Chapters, or Cathedrals, or collegiate churches, are conferred by the Holy See and by Bishops; namely, for the first six months by the Holy See, and for the other six months by the Bishops," are understood in this way. Having reached this point, the Canons rightly object that this article of the convention cannot be adapted, because the portions of the Church, or admissions to the communion of the Mass, do not have the nature of an ecclesiastical benefice, lacking the erection and division of goods, or the endowment. For it is certain that the portions of benefices have acquired the nature of a benefice by that act of the year 1842, which recognized the Church of G. as a collegiate; which is confirmed by the subsequent observance, from which, from that time until the year 1859, both the Apostolic Datary and the Episcopal Curia have conferred several canonical institutions, without anyone contradicting, as the Bishop observed. It cannot be maintained in law that there is a division of goods, because it is clear to everyone that the communion of the Mass exists in place of the endowment, which could be demonstrated by countless examples. Nevertheless, it can also be observed that such a division is not necessary in the canonical institutions. Indeed, there is a difference between a Canon and an Endowment, of which the one cannot

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exist without the other, but the Ca-

[*Latin ed. p. 512*]

The provided text does not contain the quotation from Sirach 22:21. Therefore, no changes are required.

512 JURIS CONFERENT)! CANONICAL RIGHTS, even without a benefice, can be admitted. As Pitonius states in *Disputationes Ecclesiasticæ* 17, number 14, canonical rights and benefices differ: "For a canonical right is a certain law which arises from election and reception into the brotherhood, and through it one obtains the right to participate in the choir and chapter, to receive daily distributions, and in general, to do all that pertains to canons; chapter 19 concerning benefices. A benefice, however, is an established and instituted provision for a canon, for the use and enjoyment of the things and rights assigned to it, as Pota teaches, etc." However, even if, at a given time, it were permissible to admit such individuals to these rights, it would not benefit the Chapter and Mansionaries, since the rights and privileges of the latter have been completely abolished by Apostolic letters. Indeed, the words of this passage in the Apostolic Brief state: "From certain knowledge, and mature deliberation, and with the fullness of Apostolic power, by these presents we decree and command that, in the future, only priests and clerics who have been found to be worthy of commendation by the Venerable Archbishops, and Bishops, or the Ordinaries of the place, for their piety and learning, shall be admitted to receive portions in the received churches. We therefore command that, whenever someone is to be admitted to the possession of a portion to be received in the received churches, a sample of their abilities and character should first be taken from those who desire to be admitted, and an examination should be held before the Ordinaries themselves, or their Vicars General, and at least three from the Synodal examiners, and after this has been properly completed, the Ordinary, for his own judgment and integrity, shall choose those whom he deems more worthy, and admit them to the possession of the portion to be received. Those thus chosen, commended by the letters of the Ordinaries, shall be recognized as members and adherents of a certain received church, and admitted to the possession of the portion to be received, with the exception of anyone, and especially those not elected, from the right to appeal to the Metropolitan, or to the."

[*Latin ed. p. 513*]

CANON 515 CONCERNING THE TRANSFER OF JURISDICTION: We declare that, for the aforementioned reasons, the use of such appellations is prohibited within the province, and we are most confident that Venerable Archbishops, Bishops, and Local Ordinaries will always, with great willingness and diligence, observe these precepts which we have established for

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the better administration of such churches; indeed, they will apply all their efforts to ensure that the ministers of each church are suited by reason and ability to perform the duties of their office diligently, and to be available with counsel, care, and effort to instruct the people and guide them in the ways of Heaven.

Furthermore, political authority has confirmed that the provisions contained in the Brief will be fulfilled most scrupulously and religiously. Therefore, if it is true that "the later law abrogates the former law" (leg. Posteriores ff. de legib.), even though no mention of it is made, it is certain that the statutes of the Church of G. will have no greater validity than that which they have previously possessed, having been strengthened by any prior authority. Thus, whether one considers the participations as ecclesiastical benefices or not, the matter always returns to the same point, namely, that the rights and privileges of the Chapter have lapsed, either through the force of the agreement initiated in the year 1818, or through the force of the Apostolic Brief "Impensa" of the year 1819. And it is not the case that these things have obscured their rights, nor that their patronage derives from a privilege, but from other titles. In order to address this objection, it is necessary to inquire into the title of the right to choose. Indeed, it appears that this right arises either from the nature of justice and the true right of patronage, or from the nature of grace and merely from the option of choice, which, according to a strict interpretation, can be revoked at the discretion of the grantor, as Gagliardi writes in "De iur. patron." cap. 4 n. 1, cap. 8 n. 21, 35. However, it clearly appears that the right to choose was requested by the Chapter of G. in the year 1674, purely as a gratuitous privilege, based on the history of past events. At that time, in order to settle disputes, disagreements, and lawsuits, the Bishop, with the common consent of the entire clergy, decreed that "the aforementioned Chapter, consisting now of four dignities and twenty..."

[*Latin ed. p. 514*]

514. In order to augment the number of Canons, we have decided to add one Canon, and we are also adding and incorporating twelve priests, whom we, for this first instance only, will select and designate from among them as being the most suitable. However, after this, and after the death of those appointed, others from the clergy will succeed them, according to the order of their assumption into the priesthood, with their right being preserved without any new provision or declaration. Therefore, it is in no way permissible to find any trace of a burdensome title in the aforementioned grant of the year 1674, since neither a foundation nor an endowment was established, but only the Episcopal benevolence granted the right of selection to the Canons of G. Indeed, the nature of this title, obtained by grace, does not change through the long-standing possession of elections, as decreed by the Sacred Roman Rota in Caesenaten, or Ariminen, Molendini, January

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16, 1743, cor. Calcagnino, in decision 79, number 25, before Olivario; and as falsely reported by Pitonius in *De controversiis patronorum*, appendix 47, number 65. Since, therefore, the right of selection, which the Chapter of G. claims to possess, originates not from the right of patronage, but from Episcopal liberality, it must be considered to have been completely severed after the convention of the year 1818. Moreover, the complete loss of the right of selection seems to be supported even by the most recent change in the Church of G., which was recognized as a Collegiate Church in the year 1842. This is first implicitly demonstrated by the presumed will of the Chapter. Indeed, it is taught by Schmalzgrueber in *Jus Ecclesiae, universa*, page 4, title 38, number 45, and by Reiffestuel in *Ad lib. 3 decretorum*, title 33, number 125, that the patron loses the power of appointing if he consents to the Church being converted into a Collegiate Church. However, the Canons of G. not only desired that their church be declared a Collegiate Church, but also actively promoted such a matter, as their patron indicated. Therefore, it must be concluded that the alleged right of the Chapter and the Mansionaries either never legally existed, or was completely overturned and abolished by the convention of the year 1818 and by the Apostolic Brief *Impensa Censuram*. With these premises established, the following matter was presented to the learned Fathers of the Sacred Congregation to be resolved.

[*Latin ed. p. 515*]

CANONICAL RIGHT, CANON 515. Question: Does the right of the Chapter to admit Mansionaries to vacant Canonries exist by canonical law, observing the order of precedence in such cases?

RESOLUTION. The Most Holy Congregation of the Council, having considered the matter, on May 11, 1872, responded: Priests who are actually in possession of a Canonry or Mansionary are not to be removed, except for canonical reasons, and to the extent that they are subject to such reasons. Regarding the admission of others in the future, the provisions of the Brief *Impensa* are to be observed.

FROM WHICH WE GATHER:

I. The right of election can arise either from justice or from grace; and in the former case, it indicates the true nature of a legal right; in the latter, it only indicates the nature of an election, which can be revoked at the will of the grantor, provided that a strict interpretation is maintained.

II. It seems clear that the right of election in this matter arose from a mere gratuitous privilege; since, through an agreement between the Ordinary and the Canons, such a rule for the granting of Canonries has been established.

III. Chapter statutes, which have not received specific Apostolic confir-

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mation, have no validity to the extent that they exclude, by way of a rule, a certain class of persons from receiving ecclesiastical benefices, if they are contrary to common law.

IV. A custom in a matter condemned by law cannot abrogate the law; nor can it be presumed that there is Apostolic approval in a disposition contrary to the law, which is never presumed.

V. It is not necessary for Chapters to divide their goods in order to give ecclesiastical benefices their character; since it is clear that a common fund exists in place of such divisions.

VI. A Canonry and a Prebend differ greatly: for by the former, a Canon elected acquires the right to do all that pertains to Canons; whereas, by the latter, one has a designated and established right to use and enjoy the things and rights assigned to it.

[*Latin ed. p. 516*]

516 CONCERNING THE UNION OR DIVISION OF PARISHES. On August 22, 1674, and June 26, 1875, in the city of M., in the Diocese of C., there existed two ancient parishes, the first dedicated to Saint Mary of Estella, and the second to Saint Nicholas. However, neither of these parishes was defined by boundaries, but rather, the care of each was administered by its respective pastors to distinct families. It is difficult to say how many times these parishes were divided and embroiled in disputes, due to certain privileges and prerogatives which one parish sought to obtain and enjoy over the other. Nevertheless, in the year 1788, more frequent conflicts and quarrels arose between the parishioners of Saint Mary of Estella, who were called Mariani, and the parishioners of Saint Nicholas, who were called Nicolini. To remedy these inconveniences, and by force of a civil decree, the two parishes were suppressed, and that of Saint Nicholas, being more convenient for the people, was established as a parish under the title and denomination of the Most Holy Savior. This was done in order to eliminate the root of the quarrels and disputes. Immediately, the parishioners of Saint Mary protested to the civil government, demanding that such a decree not be executed, but in vain, because the Bishop carried it out. However, the disturbances and quarrels did not cease; indeed, they often seemed to be reborn with even greater intensity, although they were temporarily suppressed by secular authority, to the detriment of the church of Saint Mary. Thus, it came to the year 1848. At that time, when all things were in turmoil in that region, the parishioners of Saint Mary seized the opportunity to request from the Bishop the reinstatement of the suppressed parish of Saint Mary, and they presented their petitions. However, with the restoration of peace and the return of order to the region, the matter was concluded.

[*Latin ed. p. 517*]

RESOLUTIONIS UNIONIS PAROECIARUM 517. Iterum parochia

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S. Mariae ad pristinam conditionem redacta est, in qua licet invita versata est usque ad annum 1868. Hac tristissima aetate iterum Mariani parochialitatem S. Mariae vindicare conati sunt. Hinc ad politicam auctoritatem recursum habuerunt, ut optatum finem consequi tandem possent. At in irritam cesserunt tentatione, ad S. Sedem se converterunt ut eorum desideria complerentur. Ablegatae fuerunt Episcopo eiusmodi preces, qui breve post temporis intervallum, mandatis S. C. C. obsequens responsum dedit. Disceptati sunt, syuoptiCB EA Q U . a k FAVORE RESOLUTIONIS UNIONIS PAROECIARUM PRO- STANT. Duplici ex capite Orator autumnavit resolvendam fuisse paroeciarum unionem, nempe ex defectu potestatis, seu competentiae, atque ex defectu seu errore causae. Et quoad primum, ait, beneficia atque ecclesias praesertim curatas uniendi potestatem praeter Pontificem soli Episcopo competere in vim cap. Sicut unire de excess, praelat, cap. quod, translationem de off. praelati et ex Concilio Tridensi, Sessio 24, cap. 1, 3 de Reform. Cui doctrinae concinere subdit Rebuf. in prax. benef. c. tit. de union, num. 22 et 23; Leo in Thesaur. for. Eccles. Univ. part. 2, cap. 16, num. 22; Van-Espen Ius Eccles. Univers, part. 2, tit. 29, cap. 1, num. 18; Ferraris bibliothec. V. parochia num. 16; Qarcias de benef. pari. 12, cap. 2, num. 147; Schmalzgrueber iur. Eccles. Univers, tom. 3, p. 1, tit. 5, num. 170 et alios. Hoc posito edicit unionem beneficiorum maxime parochialium a laica potestate decerni haud posse et decretam nullam atque irritam esse, ideoque resolvendam. Iamvero unionem in themate a laica potestate peractam fuisse ex decreto diei 29 Februarii anni 1788 constare. Neque, addit, posse subire huiusmodi unioni Episcopum S. accessisse. Praeter enim quam quod etiam in hac visione adhuc deessent solemnitates ad huiusmodi opus legitime peragendum, illud maximopere animadvertendum esse existimavit nullum hac de i e subsistere Episcopi decretum. Episcopo tantum notificatum fuisse decretum laicae po-

[*Latin ed. p. 518*]

518. He testified that he knew and obeyed, as an executor of the Government's mandates, the union, dismemberment, and dissolution of parishes, so that he might prevent their effects. This, he asserted, was the sole role of the Bishop in this matter, both in the year 1788, and in the years 1811, 1819, and 1826. He further affirmed that this was indeed true, and that as soon as ecclesiastical power was freed from the bonds of the Government in the year 1848, it immediately rejected the union and ordered its dissolution. He maintained that this thesis could not be refuted by the special right enjoyed by civil authority, granted by Urban II and Benedict XIII; for in such a concession, no mention is made of unions, aggregations, and especially the divisions and dismemberments of parishes. He confirmed this by citing the previous example concerning the churches of St. Mary and St. Nicholas in the same city. Indeed, in the year 1710, it was not secular power, but the

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Bishop who decreed the union, subject to the condition that it be confirmed by the Apostolic See; and then, equally, it was not secular power, but the Apostolic Datary and the Sacred Congregation that rejected and dissolved the union. Therefore, he concluded, if the jurisdiction and authority of the Apostolic See were solely competent to decide upon or reject a union in the years 1710 and 1714, and no secular power dared to interfere in what was not its own, how could secular power be competent in the same way in the years 1788 and 1849? How could such power decree a union in the year 1788, which had already been rejected by the Apostolic See since the year 1714? How, in defiance of the decree and action of the Bishop who restored the parish in the year 1848, could the union be prescribed again in the year 1849? From these facts, he concluded that the union of parishes, both in the year 1788 and in the year 1849, must be declared null and void due to lack of authority, and therefore must be entirely dissolved. After these remarks, the speaker turned to another aspect of nullity, namely the lack of canonical cause. He stated: "In order for a union to be validly effected, three causes must be present, namely: 1. the insufficiency of the revenues of the church to which the union is made, 2. evident necessity, 3. great benefit to the Church." He argued this point based on the conclusion of Cardinal Thusco.

[*Latin ed. p. 519*]

RKSOlUDONIS UNION..? S" L I .ii MIUiA DONIS 519 231 et seqq. García s de re beneficiaria, pars 1, cap. 2, num. 113. Lotterio de re beneficiaria, liber 1, quaestio 28, n. 142. Praeterea, affirmavit nullam ex his causis in proposito intervenisse. Quia, alioquin, nulla alia ratio ab auctoritate laica civilis potuit esse, nisi desiderium pacis et finis contentionibus et emulationibus inter parochianos utriusque ecclesiae excitatis. Verum est, huiusmodi causas non inter causas canonicas, sed inter causas politicas et profanas habendas censuit. Immo, addidit eas ne veritati quidem aut iustitiae innixas fuisse. Est enim indignum, immo iniustum, sub praetextu pacis et finis contentionibus, unum ex contendentibus ad servitutem alterius reducere. Manifestum est, ergo, nullam hinc causam canonicam intervenisse, et propterea unionem in hoc casu nullam et irritam esse concludit, et ideo dissolvendam. Quoad secundum dubium, Orator se breviter explicat. Affirmavit enim ad dismembramentum faciendum necessitatem et utilitatem causam iustam requiri. Sic tradit S. Rota in decretis, 26, num. 21, coram Ansaldo, S. C. Congregationis, in Novarien, unionis, 26 Novembris 1763, §. Synodus, in Lanciarteli, 11 Iulii 1825, §. Locum, in Ftdginaten, parochiarum, 15 Septembris 1837, §. Nec precibus. Verum est, huiusmodi necessitatem in facto urgere; eo quod superiore saeculo civitas M. quinque millium et septingentorum civium numero constabat, et tamen binis parochiis frugebatur, et in praesentia, numero civium decem mille constat, et unica parochia requiritur. Hinc necessitatem

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paroeciam dismembrandi manifestam esse concludit. Utilitatem autem adesse relevat, eo quod, divisa parochia, commodius animarum saluti consulitur, quoniam quo maior est numerus pastorum, eo maior et tutior est gregis custodia et animarum adiumentum. Quapropter, orationi finem imposuit, edicens paroeciae dismembramentum locum fieri debere, si resolutionem unionis reiiciendam esse prudentius existimatum fuerit.

EA QUAE FAVORE MATRICULATITATIS ECCLESIAE PROSTANT. Orator, qui matriculatiitatem Ecclesiae vindicavit, duplici ex capite tantum contendit posse dissolutionem unionis binarum paroeciarum anno 1788 effectuatae; nempe vel...

[*Latin ed. p. 520*]

(i) 29. The validity of a union is either demonstrated to be illegitimate and void from its origin; or, it is demonstrated that new circumstances have arisen which induce a clear necessity or utility for the Church to dissolve the union, according to the teaching of the Canonists, as testified by Schmalzgrueber, *Ius Eccl. Univ.*, p. I, t. 5, §. 199. However, he affirmed that neither of these is the case; on the contrary, he sought to demonstrate that the very opposite is true, both because of the justice and validity of the union, which has been maintained for a long time, and because of the necessity of maintaining the same union for the good of the Church, he concluded that its dissolution should be rejected. He declared that the justice and validity of the union derive from two sources: from the reasons which themselves favor the union, and from the authority of the Superior who decrees it. These reasons, as he explained in chapter 33 concerning prebends, consist in the evident necessity or utility of the Church "there," if an evident necessity or utility of the Church demands it. Furthermore, the Council of Trent, in Session 7, on Reform, Canon 6, adds any legitimate and reasonable cause. And when it specifically deals with the union of parishes in Session 21, on Reform, Canon 5, while it expresses a particular cause of poverty, it also uses a general designation, thereby encompassing all other cases permitted by law: "Bishops may also, as legate of the Apostolic See, make unions of parochial churches because of their poverty, and in other cases permitted by law." Since the designation of causes is general and broad, it cannot teach a certain rule, according to Cardinal De Luca in his notes on the Council of Trent, discourse 8, no. 13, but rather the justice and validity of the union depend on the circumstances of each individual case; therefore, this matter should, for the most part, be entrusted to the prudent judgment of the Bishop, as he states in discourse 34 on Parishes, no. 2. Among the many cases that provide a reasonable cause for a union, it is evident that the elimination of discord should be included, if one observes that the origin of the most serious evils is fostered by these very discords. For the Sacred Canons call these discords pests, and they warn that those who foster them betray God, and they implore them not to be like Iudae, the

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betrayer, as in Canon 83, chapter 11, question 3; furthermore, they speak of the dangers filled with—

[*Latin ed. p. 521*]

RESOLUTION REGARDING THE UNION OR SEPARATION 521 of dioceses, and which are burdensome to the gods, and offensive to divine majesty, declare that discord is not, as in Ciernen, unity, chapter 2. Furthermore, they teach that the most excellent office of the apostolic ministry is to extinguish discord, as if it were the fuel of the prince of darkness, as is stated in the treatise concerning order and peace, chapter 1. Therefore, if discord in the Church is such a grave evil, and if the supreme good is to eliminate it, it follows that there is a just and legitimate reason for the union of churches in this matter, which has long been confirmed by the judgment of the Supreme Pontiffs, as well as by the example of the Holy Roman Church and the Sacred Congregation of the Council. The advocate cites the union of two parishes carried out by Cardinal Frederick Borromeo in order to quell discord that had arisen among the clergy, and that such a decree had received confirmation from the Supreme Pontiff. When this union was subsequently brought before the judgment of the Holy Roman Church, that Tribunal declared, without any doubt, that there was sufficient reason for it, namely, to quell discord, in decision 139, number 3, page 4, record. The advocate proved, with various and numerous testimonies, that there was no doubt about the truth of the disagreements in fact. He also added that there could be no doubt about the authority of the superior who decreed the union, since it is clear that such authority belongs to the person of the Bishop as the Delegate of the Apostolic See; thus it is most clearly established in the aforementioned canon of the Council of Trent, Session 21, on Reform, chapter 5; and thus Peter of Perugia, in his work on the union of churches, chapter 4, number 21, and Gardas, in his work on benefices, page 12, chapter on the union, number 62, and Ferraris, in the title on unions, 53, and Cardinal De Luca, in his notes on the Council of Trent, discussion 7, number 11, all agree. Therefore, since just and legitimate reasons for the union in question had preceded, in order to extinguish discord, and since the Bishop had been endowed with the appropriate authority, he argued that the decree issued was, with the best of right, a valid one, namely, the suppression of the parish in the Church of Saint Mary of Estella, and the change of the titles of both churches, with only one parish remaining in the mother church of the Most Holy Savior. With these conditions, he said, the perfect union would not be able to be dissolved, first of all, because of the very nature of the union itself.

[*Latin ed. p. 522*]

522. CONCERNING THE PERPETUALITY OF THE UNION, OR THE INDISSOLUBILITY OF PARISHES, which, according to the decree of the

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Council of Trent, cited above, Session 21, on Reform, chapter 5, is perpetual, and therefore "cannot be revoked, nor in any way infringed." And although such a decree should not be understood so rigidly that, even for a just cause, as stated above, the union cannot be dissolved, nevertheless, according to the opinion of Cardinal De Luca in his annotations on the Council of Trent, discourse 7, number 34, the case of dissolution is rare, since the dissolution, which is said to be a species of alienation, requires rigorous formalities and causes. Indeed, in such a case, the orator states, it is necessary to lack the rigorous causes of such a dissolution, and indeed, on the contrary, to require causes entirely opposed to it, in order that the union may be preserved firm and inviolable. For these causes are the same as those that produced the union, namely, discord, disputes, and quarrels, which would soon revive if a dissolution were to occur unexpectedly. Moreover, the Rectors of the Church of the Immaculate Conception have repeatedly attempted to vindicate the parochial status of that church, but always the danger of discord and the threat of public unrest have intervened. In the year 1850, the supporters of that church again petitioned the civil authority; but the petition was rejected because of the imminent division that it could provoke among the citizens. A similar judgment was issued by the new authorities in the year 1868, when the Rectors of the Church of the Immaculate Conception petitioned them to restore the church to its parochial status, contrary to canonical sanctions. The Bishop himself, in his information presented to the Sacred Congregation on August 24, 1873, could not conceal that he still feared some popular tumult in the event of the dismemberment. This is because such supporters, infected with a certain form of liberalism, sought the parochial status of that church with a political rather than a religious motive. And it is clear that the cause of the parochial status was not, in fact, for the benefit of the Church and the salvation of souls, but rather for the benefit and convenience of factions newly formed. Therefore, such supporters act imprudently and rashly, undermining the authority of the Church and involving the Apostolic See in these popular conflicts.

[*Latin ed. p. 523*]

RESOLUTION REGARDING THE UNION OR DIVISION. The Ordinary, however, in his aforementioned report, states that the population, which numbers more than ten thousand souls, cannot conveniently receive the sacraments in a single church served only by the four chaplains. But the defender of the mother church refuted this, asserting that the Bishop had given such testimony entirely gratuitously and without any knowledge of the facts. For no fewer than ten priests administer the Sacrament of Penance there daily, and while two assistants and four chaplains attend to the care of souls in support of the parish priest, these same priests perform all other sacred duties in the church. Regarding the divine worship and the growth of religion and piety, he affirmed that the condition of that church had

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been prosperous. For there flourish seven pious sodalities; frequent sacred functions are held in the church, and the Divine Word is dispensed, along with general Communions. These pious works, which adorn the mother church, also provide another very strong argument against division; for from this division, the religion and piety of the faithful would suffer the greatest detriment, as a result of the dissolution of these same works, which would necessarily follow, since there would no longer be a center for pious institutions in a single church, nor would the same leaders be available to assist the members of the sodalities, as they do now. Regarding the second point, the Advocate confirmed his thesis based on a specific decree of the Council of Trent. The opposing party has not adduced any other reason that pertains to division, except for the increase in the number of the faithful in recent years, and also the distance of some houses from the church. However, he said, with regard to the increase in the number of the faithful, in this very case, the Council of Trent wisely prescribes, in Session 21 on reform, chapter 4, not that the parish be divided, but only that the number of assistants to the parish priest be increased. Therefore, the unanimous opinion of the canonists is that the number of the people does not provide a sufficient reason for the division of a parish; thus teach Pyrrhus, *Corradus, prax. benef. c. I. 3, c. 2, n. 7*; *Pirit, ing. iur. can. I. 3, tit. 48, § i, n. 5*; *Bota, decis. 288*.

[*Latin ed. p. 524*]

521. RESOLUTION OF UNION, OR DIVISION, n. 2, p. 2, rec. It is not easily demonstrated that the increase of priests who assist the parish priest is beneficial, as can be seen from the fact of the year 1868, when an Asiatic disease arose. In that year, the clergy of the parish church diligently and zealously ministered to the sick, so that no need for more numerous assistants arose; this necessity is much less evident where no extraordinary cause, or the contagion of pestilence, is present. Regarding the distance of certain families from the church, the Orator himself has never presented the cause of division based on the Council of Trent. However, this is not explicitly prescribed solely due to the distance itself, but rather due to the great inconvenience that parishioners sometimes endure when they go to church; thus, in the aforementioned Session 21 on Reform, chapter 4. Therefore, distance or difficulty of location is not, by itself, a sufficient cause for granting a division, but rather in conjunction with a great inconvenience to the parishioners. Thus, the learned Lotterius teaches in I. 1, question 28, n. 29. Fargna, on the law of patronage, p. 1, canon 4, article 4, n. 62. This doctrine has always been held by the Sacred Congregation, as can be seen from the document from Toledo, dated February 1602, found in Gracián de Beneficiis, p. 12, chapter 3, Cassan. on division, December 17, 1740, Vin'imilien. on division, August 8, 1818. But nowhere is it stated that the parishioners have been conquered by this great inconvenience, and

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only that a certain distance of some houses has been mentioned, a statement which is rather directed against them, since the parish church occupies the center of the town. And of all the inhabitants, only a small portion, perhaps one-seventh or one-eighth, are located more than six hundred and sixty meters away from the parish church, while the majority of houses and inhabitants are located much further away from it. Furthermore, neither rivers, nor torrents, nor hills or valleys must be crossed in order to reach the parish church from the outermost boundaries of the town, which is entirely necessary to justify a division. Therefore, the condition entirely required by the Council of Trent is lacking, namely, that this distance must be accompanied by a great inconvenience to the faithful; and therefore, under this...

[*Latin ed. p. 525*]

RESOLUTION CONCERNING THE UNION OR DIVISION, or rather, concerning the rejection of division. Having briefly stated these things, the following points were to be examined. I. Whether and in what manner there is a place for the resolution of the union of parishes in the matter at hand. And, to the extent that it is negative, II. Whether and in what manner there is a place for the division of said parishes in the matter at hand. RESOLUTION. – The Sacred Congregation of the Council, having knowledge of the matter, decided on August 22, 1874, to respond as follows. To I and II. The parish of Saint Mary of Estella exists de jure according to the judgment of the year 1715; nevertheless, considering the circumstances, there appears to be a place for the division of the parishes of Saint Mary and Saint Nicholas, according to the limits proposed by the Bishop, and with the understanding that "The intention is that the Bishop proceed with the division when he judges it prudent, and after having taken the necessary precautions, and having ensured the certain and stable endowment for the parish of Saint Mary" (1). Not disheartened, the defender of the Church of Saint Nicholas implored a hearing and obtained it, arguing, among other things, that such a Church would not only be deprived of its necessary support, but would also be harmed by numerous provisions and decrees of both the ecclesiastical court and the civil tribunals. Therefore, it could not acquiesce to the decision of the Sacred Congregation, as this would, once again, open the way to ancient dissensions and internal discord. Having stated these and other things, the matter was resolved on two grounds: namely, by upholding the validity of the union completed in the year 1788, and by refuting the necessity of division. Regarding the first point, the same arguments were used, almost verbatim, as those presented in the prior discussion of the case. Since a Rescript was subsequently issued to the parish authorities (I) These Italian words, translated into idiomatic Latin, and conversely, sound as follows: "The matter is such that, having been made secure of a certain and stable endowment, the Bishop may proceed

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with the division when he has judged it prudent, and after having taken the necessary precautions." Act, Vol. VIII, page 93, number 34.

[*Latin ed. p. 526*]

526. RESOLUTION REGARDING THE UNION OF THE CHURCH OF ST. MARY OF ESTELLA. The Congregation for the Eastern Churches, stating that the Church of St. Mary of Estella adheres to the form of the year 1715, did not at all acknowledge the validity of the union, and, therefore, in order to uphold the union itself, and with regard to the aforementioned decree, it has now advanced with new arguments, both legal and factual. After various such explanations were presented, in order to demonstrate the validity of the union, the defender inquired about the causes that might suggest the dissolution of the union itself; and he asserted that he could find none. Finally, in order to exclude the dismemberment of the Church, in addition to what has been mentioned above, he noted that in that province there are examples of widely populated cities that are governed with great tranquility under a single parish; and he added that hatreds and animosities would again be inflamed to the extent that such a dismemberment would be tolerated. However, the defender of St. Mary of Estella presented an argument, with which he sought to defend the justice of the aforementioned decision. New arguments were presented before the Sacred Congregation, and the question was proposed whether it was necessary to adhere to or to depart from the decisions in the first and second propositions in this case. The Sacred Congregation, after again discussing the matter on June 26, 1875, responded: In the decisions; nevertheless, preserving the honorary privileges of the parish in favor of the Church of St. Nicholas, and furthermore.

FROM ALL OF THE ABOVE, IT IS UNDERSTOOD:

I. That the power to unite churches, especially those that are dependent, belongs, according to the law, only to the Roman Pontiff and to the Bishops.

II. That, according to the Council of Trent, Bishops may have the power to compel Rectors of churches to add coadjutor priests if the people are numerous, so that one Rector cannot suffice for administering the sacraments and performing divine worship.

III. That the same Bishops may also have the power to establish new parishes if the parishioners are unable to access them due to some serious obstacle, without great inconvenience, in order to receive the sacraments and hear divine services.

[*Latin ed. p. 527*]

IV. However, that a division may be made according to the norms of law, besides other formalities, which consist in hearing the Parish Priest

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and others to whom it pertains, it is absolutely required that there be a just cause, so that the danger to souls may be avoided, which often arises from distance or the difficulty of travel. V. Although the inconveniences of distance and the difficulty of travel can be considered through coadjutors, nevertheless, according to some Doctors, it is more fully satisfied by the erection of a new parish, and this was the intention of Trent in cases of great inconvenience. VI. Unions or divisions of benefices, especially parochial ones, which are carried out solely by secular authority, are null and void in ecclesiastical law. RESOLUTION OF UNION AND DIVISION.

[*Latin ed. p. 528*]

Concerning PAROCHIAL RIGHTS (1) on January 25, 1873. A summary of the matter. By supreme decrees established in the year 1739, Agaiba and Beatrice, sisters of the Blessed, of the city R., bequeathed all their possessions for the purpose of establishing a conservatory for virtuous and honest women in their homeland; for this purpose, they designated the parish priest of St. Nicholas, and the superior of the Congregation of St. Philip Neri, as testamentary executors, with all suitable powers. Both testators, having lived a life pleasing to God, obeyed the mandate, and the conservatory was established in the year 1747 under the title of St. Theresa, with its own rule and oratory, which remained until the year 1810, when, along with the Congregation of St. Philip, and other monasteries in the same city, it was suppressed by a general edict of the Government of Italy. With affairs in the pontifical territories restored to their former state, the Apostolic Vicar of the diocese reported to the Holy See: that there were revenues in the city R. for the restoration of the monasteries of St. Clare and St. Catherine, as well as for the endowment of two priests of the Congregation of St. Philip; that, however, there was a lack of means for the sanctification and Christian instruction of the people; and that the buildings of the seminary were far too small for the number of clerics; and he proposed that, after the restoration of the monastery of St. Clare, the buildings and possessions of the nuns be assigned to the seminary, with the obligation of paying an annual pension to each of the seven nuns of said monastery who were still alive; but that, after the death of three of said nuns, their pensions would be transferred to three priests of the Congregation of St. Philip, to be added to their number.

1 (1) The matters concerning the seminary are recounted in Volume III, pages 47 and following, and the matters concerning the funerals are recounted in Volume VII, pages 161 and following.

[*Latin ed. p. 529*]

OF PAROCHIAL RIGHTS 529. Following the death of all the nuns, the remaining sum of the pensions would be allocated to the support of four Sisters of Charity, who could be established in the buildings of the Seminary

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to educate young girls. A proposal was made to the Apostolic Vicar, and, after a Pontifical decree, Sisters of Charity, at least four in number, could be endowed from the assets of the dissolved Monastery of the Most Holy Clare, and established in the buildings of the Seminary itself, along with external schools, and an internal institution for the education of girls. In order that this excellent undertaking would not have to wait for the death of the nuns of the Most Holy Clare, the Supreme Pontiff, also accepting the proposals of the Apostolic Vicar, by a decision of the Sacred Congregation of Councils on March 22, 1822, granted an indulgence: that those Convicts of the Convent of Saint Theresa who were still alive should immediately enter the buildings of the Seminary, and in the meantime, carry out the desired work of education. And so it happened that, from the year 1822, new services were performed in the internal chapel of the old Seminary, until the year 1846; during which time, the Church of Saint Anthony, formerly belonging to the Fathers Antonians, and most recently belonging to the Seminary, was transferred from the Seminary, along with its own buildings, to the institution, and completely renovated at the expense of the institution. The Bishop G. blessed it, and solemnly dedicated it for the use of the institution. Since the institution now had its own public church, the Bishop G., having obtained from the Reverend Parish Priest of Saint Angel the cession of rights that he might have had over the aforementioned institution, since it was located within his jurisdiction, exempted it from the jurisdiction of the parish priest by his decree: reserving only, according to the Apostolic Constitutions, for the Parish Priest of Saint Angel the fourth funeral or canonical portion from the revenues of the Church of the institution, on the occasion of the funerals of both the sacred virgins and novices, as well as of women who were living in the institution for reasons of probation, education, or sustenance. It should be noted that the only existing copy of this decree, which was issued during the visitation, is a handwritten copy by the Ordinary, but it is not protected by a signature or seal.

[*Latin ed. p. 530*]

530 Shortly after the renunciation was issued, the parish priest, D., regretted his action and requested that it be declared null and void by the Sacred Congregation, especially for this reason: because by it, the rights of his successors in the office of Parish Priest of St. Angel were being violated. The Ordinary, who was then the Bishop, B., was consulted for information and his opinion. He reported that the parish priest of St. Angel had exercised "almost no rights" over the Convent of St. Theresa; and that until the year 1846, he had only been allowed to perform the funeral rites for deceased nuns, and that only with respect to the right of burial, which, not having their own, they obtained in the parish church or in the public cemetery. He considered this to be in accordance with the constitutions of the Convent,

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and that nothing from the renunciation of the parish priest, D., should prejudice the rights of his successors, since the Church of St. Anthony, having been granted to the Convent by Apostolic authority, had never been a filial church; and therefore, the parish priest had never had any rights over it, nor could he ever obtain them against the will of the superiors. Furthermore, while this information was being awaited, the parish priest of St. Nicholas also presented a document in which he sought the restoration of all the rights that belonged to him and to the Prefect of St. Philip, based on the will of the sisters, B., concerning the Convent of St. Theresa. And since a new Bishop, H., had succeeded Bishop B. in the diocese, the Sacred Congregation also inquired of him, so that he might report and express his opinion on all those rights, which, taking into account the subject matter, seemed to belong to the parish priest of St. Angel, and to that of St. Nicholas. After careful consideration, he stated that, with respect to the parish priest of St. Nicholas, all power had ceased for those who had been elected as executors of the will, due to the erection of the Convent; but with respect to the parish priest of St. Angel, he requested that the Sacred Congregation, accepting the prayers of the nuns, would deign to approve and confirm the decree of Bishop G., and to strengthen it with the sanction of Apostolic authority. The decree was issued and placed on record on June 8, 1857. Then the case fell silent: and while the controversy was pending, some of the nuns of the Convent died, and their funerals were conducted by the parish priest of St. Angel.

[*Latin ed. p. 531*]

OF PAROCHIAL RIGHTS 551, who nevertheless reserved parochial rights for himself. After the death of a certain Maximina, a young girl, the same Parish Priest urgently requested that these rights be observed, and in order that no prejudice might be caused, the funeral was performed by the Capitular Vicar in the church of the Conservatoire. However, a cause for dispute arose due to the death of a certain wealthy young girl named Mary, who resided in the Conservatoire for the purpose of her education; in this case, the Capitular Vicar decreed that a solemn Mass should be celebrated in the presence of the body by the confessor in the church of the Conservatoire, and that the Parish Priest of St. Angel should perform the remainder of the funeral rites in his own church; meanwhile, all revenues were to be held in abeyance until the controversy was resolved, which, as will be seen below, encompasses all of these events. {Synopsis of the Dispute. SUMMARY OF THE ARGUMENTS OF THE PARISH PRIEST OF ST. NICHOLAS. The Parish Priest of St. Nicholas argued: 1° that, according to the intention of the Sisters of the B. V. M., the Conservatoire of St. Theresa should have been and truly was a congregation of lay persons, and therefore subject to parochial jurisdiction; 2° that they were subject to certain rules of living, especially in spiritual matters, which

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subjected them to the authority of the testamentary executors; 3° that the testamentary executors had fully the power to establish the Conservatoire, and that they truly, and entirely independently of any interference, established the Conservatoire, and imposed rules upon the inmates under which they lived until the year 1808, and that they had always used their authority for the good of the Conservatoire. He also added that it made no difference whether the Conservatoire of St. Theresa, originally located in the Parish of St. Nicholas, was subsequently transferred to the buildings of the Seminary, which are located within the boundaries of the Parish of St. Angel; for he, as Parish Priest of the church in whose jurisdiction the Conservatoire was located, did not have the right to exercise jurisdiction over it; because the matter concerned a lay congregation, and he could not exercise this jurisdiction without any special commission. Finally, he maintained that the Conservatoire was not at all different from the institution established according to the will of the Sisters of the B. V. M., and that it had been restored with the same revenues.

[*Latin ed. p. 532*]

532 The rights pertaining to the parish of Saint Theresa were assigned to the nuns, and the nuns themselves, except for the burden of educating, were restored to their former status and manner, as prescribed by the founders. ARGUMENTS OF THE PARISH PRIEST OF SAINT ANGEL. Departing from the principles of law, he placed the foundation of the entire matter upon a well-known theory: namely, that religious orders, if not by common law, at least by the force of a privilege inserted into the body of the law, possess the right to bury; but that this kind of privilege pertains only to those orders which are called "exempt," that is, those which have solemnities with the communication of privileges. Indeed, the privilege of burial was first granted to the Brothers of the Order of Preachers and the Friars Minor, and afterwards, either through the communication of privileges, or through a special concession, it was extended to all orders. However, the nuns, being exempt, undoubtedly participate in this kind of privilege: since they have communication of privileges with the religious orders of men to which they respectively belong, and this does not contradict their favorable and non-repugnant status. But this must be admitted with a limitation. For, in their churches, even those that are outside the enclosure, burials by secular individuals of either sex and of any condition, cannot be constructed or chosen without the license of the Most Holy Synod, the Bishop, and the Religious, as is stated in the commentary by Cardinal Peter, concerning the Constitution *Caelestinus III*, N. 29. On the other hand, the Most Holy Synod, in the Salernitan parochial law, Decree of August 28, 1702, decreed that exempt nuns are subject to the pastor of the parish within whose limits they exist. And Cardinal De Luca, in his commentary on Constitution *Urbano IV*, N. 21, adds that, in institutions which have not been approved

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by the Holy See, only a chaplain is permitted, and in general, the parochial rights are maintained. For institutions are considered as congregations of secular persons, not religious: because, in order to establish a regular status, it is necessary that the persons who embrace this status make three solemn and substantial vows, Cap. *ad Apostol, de Regul.*, and live under a rule approved by the Apostolic See, Canon *Perniciosum* 18, qu. 2. Nor is it sufficient that the rules have been approved by the Holy See, because...

[*Latin ed. p. 533*]

CHAPTER V. CONVENTUALS. 555. The Holy See should always require a clause to be included, prior to approval, which prevents the convent from being declared to be one that has been expressly or tacitly approved, as declared by the Holy See in the Epistolae et Rescripta in Materia Monachica, January 15, 1706, and by the Congregation, Neapolitana, July 28, 1708. To these, one must add the authority of Benedict XIV, who, in the Constitution concerning the Convents of English Virgins, dated April 30, 1749, after declaring that the English Virgins, dedicated to the care of young girls, could not be considered true religious, because the vows of poverty, obedience, and chastity made by them could not be considered to be joined with an express or tacit profession in any Order approved by the Apostolic See as being in a state of true religion, and therefore, such vows, when made, should be considered simple vows, and not solemn ones; he wished to subject the aforementioned virgins to the authority of the Ordinary, and granted them, as long as they lived under the obedience of the Ordinary, permission to keep the Sacrament of the Eucharist in their own chapel, without prejudice to the rights of the parish church. Regarding the specific case, he added: it is undoubtedly the case that the Sisters of St. Teresa are lacking those conditions which constitute a true religious state. For the Sisters of B. expressly ordered in their testament that the convent should be composed of lay persons and moral individuals, in the manner of a lay institution, and that the enclosure should be removed for those who are not enclosed, to whom only certain rules of life should be imposed. Moreover, it was noted that in their constitutions, it was stipulated that the full right of the parish should be preserved with regard to the funerals of the nuns, unless otherwise ordered by the Holy See. Furthermore, it was deemed worthy of note that when the Holy See granted permission for pious mistresses to be established and to temporarily undertake the education of young girls, the erection proposed by the Apostolic Vicar was approved, but not the convent of St. Teresa. He added that neither the rules of the convent had been approved, as can be seen from the decree of Bishop G. of August 22, 1846, nor was there any document to prove that

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the approval of the Holy See had been obtained.

[*Latin ed. p. 534*]

534 IUR 1.11 PAROCHIALIUM: The sisters of the parish of Saint Theresa, although they do not possess the formal enclosure required by Canon 6 of the sixth book, but only an Episcopal enclosure, which cannot truly be called an enclosure, since the sisters go out to give instruction and to walk about, and since, with the permission of the Bishop, outsiders are admitted into the internal buildings of the institution. From this, it can be gathered that the sisters of Saint Theresa improperly assume the name of nuns, and undeservedly claim for themselves those rights which are properly denied to nuns. Furthermore, it has been an abuse that they have remained within the boundaries of the parish of Saint Nicholas, that they have kept the Blessed Sacrament and the oil of the sick in their own oratory, and that they have not obeyed the parish priest regarding the fulfillment of the Paschal precept. For these rights belong only to parochial churches and to regular churches (specifically, to those regular canons who reside within the monastery walls), as Cardinal Petrucci states in his commentary on the Constitution of Urban IV, section one, number 17 and following; Pellizzari, in his manual of canon law, treatise 3, chapter 6, numbers 1 and 2; and Benedict XIV in his Constitution *I quamvis iusto*, of April 30, 1749. Therefore, in the response given by Petrucci I, chapter N, numbers 21 and 22, to the question "Whether those living in the institution of ConcepciÃ³n Capitae Pennae can keep the Blessed Sacrament and the Holy Oil in their church without the permission of the Holy Congregation," the answer was "They cannot do so without the permission of the Holy Congregation." Furthermore, the Salernitan Jurisprudence of Parochial Matters, of August 19, 1870, in question II, and the Sacred Congregation of Rites in its general decree of the year 1703, in *Car dell.*, number 3670, in question XXVI, also speak of this. It is also an abuse that the oil of the sick is kept in the church of the institution, which was formerly possessed by the Antonian Fathers, since only the parish priest, or another only with the permission of the parish priest, can administer the Extreme Unction to those subject to him; and in fact, before the cession to the parish priest De Rubeis, the Extreme Unction was administered to those living within the institution only after the parish priest had been consulted, whether they were members of the community, visitors, or girls, even if they were buried in the church of the institution. After the parish priest was admitted, it became customary for him to administer the Paschal communion to those in the institution.

[*Latin ed. p. 535*]

Regarding PAROCHIAL RIGHTS, it is to be understood that to administer these things, having done so out of a desire for tolerance and peace, rather than out of a legal obligation; and that no prejudice whatsoever can

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arise to the Church of St. Angel, because no damage is caused to the Church through the negligence of a predecessor. Concerning those young women who, having come from convents, reside in a conservatory for the purpose of education, it is argued: if it is not permissible to declare them exempt from their own parish priest, then much less is it permissible to do so for those who reside in the conservatory without a stable arrangement. And this is to be held all the more, because, in order that they may be able to be buried in the church of the monastery in which they died, express permission is also required from the Most Holy Congregation of Bishops, and from the Regulations. From this, the opinion of those who teach young women in monasteries is refuted, namely that they must be buried in the cemetery of the nuns, even though they were taken from life without having made a choice of burial, because they form the same moral body with the nuns. Indeed, this is asserted without any foundation, and it contradicts the Tridentine Council, Session 25, Chapter 2, in which it is proclaimed that the privileges of religious are shared only by those who are of the religious family. However, in order that this may actually be said to be of the religious family, according to the same Tridentine Council, Session 24, Chapter 2, on reform, three things are principally required: namely, that they actually serve in the monastery; that they reside within the walls and houses of that monastery, and that they live under the obedience of the superiors. These conditions are required not disjunctively, but cumulatively, as has been clearly declared by Gregory IX in the Constitution *Circumspecta*, dated November 27, 1580, § 2. Nor is it valid to allege that the monastery has the right to bury those being educated, by reason of the domicile acquired there by those being educated; because the young women who reside in the monastery for the purpose of education, since they are entirely secular, are not subject to the monastery, and therefore, if any privileges of the nuns exist, they cannot participate in them. Pignatelli, *Tractatus*, Vol. V, Council 617, number 12; Maschat, Book III, title 28, number 11; Cardinal Delugo, *Responsiones Morales*, Book IV, doubt 33. In opposition to this, it cannot be alleged that the decision of the Sacred Congregation in the case of *Pennati*, regarding burials, of July 6, 1737, can be invoked, provided that there is a particular circumstance of the case, namely that the young woman had chosen burial in the church of the monastery. But the choice of...

[*Latin ed. p. 536*]

536 - Concerning the burial grounds of parishes, a matter arising from Feretrano, presented on April 21, 1842, before the same Holy Congregation, in which the following question was posed: "Whether the Monastery of the nuns of Saint Clare in Macerata Feltria is permitted to bury within its church those young girls who are educated there, as well as those who die within the same monastery," even though the nuns demonstrated that they

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enjoyed an exemption, and that the administration of the sacraments was customarily performed by the monastery's confessor, and that there did not exist a double burial place within their own church, so distinguished that one would be for the nuns and the other for those being educated. However, the response was: "Affirmatively, regarding the choice of the burial place." And the matter was presented again under the question: "Whether, and in what respects, one should adhere to or depart from the decisions made in this case." The response was: "With a prior departure from the previous decisions, affirmatively, considering the circumstances." However, all that has been said concerning those being educated applies also to women who reside in the monastery for the purpose of meals. Furthermore, it is added, referring to the statutes of the Roman Clergy, Book III, on the right of choosing a burial place, section 59, provided that the domicile contracted and the will to remain permanently in the monastery favor the parish rather than the monastery. (Mascat, Lib. III, title 28, no. 6). Regarding the transaction of the parish priest with his predecessor, it is a fundamental principle of law that a transaction concerning the affairs or rights of the Church, made by a prelate or the rector of the Church without the consent of the Superior, does not bind the successors, because it is entirely personal and does not extend beyond the person who transacts. For a transaction to be real and to bind the successors, it is required that it be confirmed by the Apostolic See and with certain knowledge. (Fagnan, Lib. 1, decrees, on transactions, in chapter "Veniens Rei ff ens," referring to the same place, § III, no. 63 and 64; Deluca, on jurisdiction, discourse 24, and on preeminences, discourse 5, no. 8; Pignatell, Cons. 114, no. 17; Ferraris, V. Transad, no. 22). And this is so because, since cession, remission, and transaction appear to be forms of alienation, the law which governs those who transact (leg. qui transigit 1 ff. de transad, and leg. Praeses 12 L. transactio 18 Leg. Iubemus 43, ibid. cod. S. C. in Annonm. July 21, 1794, and in Civit. Castelli Concordia, August 8, 1818) require the same solemnities.

[*Latin ed. p. 537*]

OF PAROCHIAL RIGHTS 557 {ates require what is prescribed for alienation by the Extravagant "AmbiVosae" concerning things of the Church that are not to be alienated. Furthermore, concerning funeral rites, it is necessary to assert, as Cardinal Petrucci states in Constitution III of Celestine III, section 1, number 22, that a concordat regarding the terms of funerals cannot be established without the Apostolic approval; indeed, the renunciation made by the Parish Priest N. has never been approved by the Holy See; rather, even the renunciation itself incurs a penance, which is given in the Church whenever the approval is required, as Cardinal Petrucci states in Constitution Pauli II, section 5, number 43; Dr. Luca, "De Beneficiis," chapter 51, numbers 5 and 6. Therefore, given that these things are so, it is not sufficient to have a fourth funeral to fulfill the parochial rights; for

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the right of the parish priest is restricted to the canonical portion, when the parishioners, by right, are buried in a church outside the parish, but not when they are to be buried according to the laws within the parochial church. The decree of the Bishop O., which concerned this matter, was declared to be of no value for several reasons. Firstly, because the decree remained incomplete and it is not shown that it was fulfilled in Aversa. However, the burden of proof of this lies with the opponents, since the parish priest N. has a well-founded intention to exercise all parochial functions within the limits of his own parish; and the one who claims to be exempt from the burden of proof is mistaken. See Chapters "De Dioecesi" and "De Pastoribus" in the "Cup. Frat. de sepult." Indeed, as long as this proof is not given, the decree in question remains as if the purpose of the decree is still to be fulfilled. See Benedict XIV, Constitution "Causarum," November 16, 1747. Finally, even admitting the existence of the episcopal decree, it is devoid of all value, because the Bishop cannot grant an exemption from parochial jurisdiction. See "Ursaya, Discept. Eccl.," 18, numbers 67 and 78, volume 1; "De Ret. S. C. Ep. et Bey. in Taurinen. Iurium Parodi.," August 21, 1682. And this is all the more true, because through a concession made in a supposed decree, the rights are, as it were, severed from the Parochial Church concerning the care of souls; and in this manner...

[*Latin ed. p. 538*]

The division of a parish requires the concurrence of certain solemnities and a just cause. The Abbot, in his hearing concerning the church building, cited Cardinal De Luca, chapter 35, number 6, and Barbosa, in the collection on the Council of Trent, session 21, chapter 4, number 5. He also stated that this present case cannot be extended to those matters which are found in the same session 21, chapter 4, concerning the faculty of the Bishop for the erection of a parish. For the Bishop cannot erect new parishes unless the prescribed solemnities are observed, and, unless the circumstances of the case, as determined by the Council of Trent, are present. An objection was raised, arguing that the church was formerly possessed by the Antonian Brothers, who had annexed it to their monastery. To this, it was responded that the privilege enjoyed by the religious is not a real one, but a personal one; therefore, since the religious community, for whose benefit the privilege of the church was granted, has ceased to exist, the privilege itself ceases. John Andrew, in chapter concerning persons, number 6, verse, cited *Rerum Roura Decisorum*, 1029, number 16 and following, in the case before Emerix, and *Decisorum*, 105, number 5, in the case before Ra. Furthermore, it was stated that the resolution of the Sacred Congregation in the case of Pergulana, dated 18 December 1824, was not applicable, and that it was declared that the church of the Seminary had not lost the exemption which the Fathers of the Oratory formerly enjoyed. It was established that, during the expulsion of the Fathers, someone was always present to

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safeguard the church and its buildings, and to perform their functions; and in the apostolic letters by which the church and buildings of the Fathers of the Oratory were assigned to the Seminary, the Pope decreed that the functions which the Filippini had performed, and which the Seminary itself should always perform. It is indeed certain that if these circumstances had not been present, a completely different answer would have been given; as the Sacred Congregation for Reforms responded to the doubts proposed to it on 16 December 1816 (1), in the negative to the question: "Should the [institution] be retained as a filial parish, so that the parish priest has the same rights as in other parishes? Has he exercised all his rights up to now, and is it probable that they will be revived?" The answer was "no" in the negative, and in the future, "yes" in the affirmative. To these answers, the confirmation of the Conventual Fathers of Perugia was added, under the jurisdiction of His Most Holy Father Pius VII, in Nonantola, who declared that the [institution] should be retained as a regular monastery, under the same conditions, on 17 December 1816, concerning the cult and burial.

[*Latin ed. p. 539*]

OF PAROCHIAL RIGHTS 559. Nor does providing a supplement to deficiencies constitute a reason for a re-establishment of that right in the Church. Indeed, among the reasons by which a Bishop, with the consent of the chapter, may grant a right of burial to a certain confraternity, is to be found the edification and endowment of the Church; *Moncell. form.*, leg. tit. VI, Form. n. 25. However, that right is not necessarily acquired through the edification of the Church, and once acquired, it does not endure, unless a special election is held. For, since the choice of burial is an act of the will of the deceased, and not of another, *Monald. cons.* 91, n. 2; *Marant. resp.*, vol. 2, resp. 14, it is undoubtedly necessary to require a particular declaration, lest that which results from the construction itself be deemed sufficient. Finally, a particular case concerned the young woman, Mary, for whom her brother, by order of his father, chose the burial place; it was inquired whether, while the daughter was still alive, the choice of burial had taken place: because, by the death of the child, paternal authority is extinguished. *S. C. Ep. et Reg.* in *Fuginten*, 27 October 1587; *Montis Pelusii*, 6 June 1659; *S. C. C.* in *An el Unen*, 15 September 1605. The burden of proof in such matters rests with the opposing party, for the Parochus of S. Angeli intends to act in accordance with the law. Finally, custom has come to prevail, and numerous instances have demonstrated its favor.

ARGUMENTS OF THE DEFENDANT. He who argued for the Conservatorio of S. Theresa first addressed the Parochus of S. Nicholas: it is true that the Rector of S. Philip and the Parochus of S. Nicholas, at the time, had been requested by the Sisters of B. to establish a conservatorio and to endow it according to the rules, provided that the approval of the Ordinary

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was also obtained. But, once the conservatorio was established, their rights ceased. This was declared by the Prefect of the Congregation of S. Philip Neri. Secondly, it must be kept in mind that the current conservatorio does not appear to be the same as that founded by the Sisters of B. Indeed, the document which the Apostolic Vicar presented to the Pope in the year 1822 speaks of "Pious Teachers," and it only calls upon the surviving Sisters of S. Theresa for assistance.

[*Latin ed. p. 540*]

Furthermore, it is found that the purpose of the institution is not the same, nor are the goods identical. All these things present an institution entirely different from that which the Sisters of B. had prescribed. With a greater weight of arguments, he contended against the parish priest of S. Angelo, and supported the right to bury the deceased, the provision of meals, and the education of orphans, citing: 1° from the cession of the parish priest D.; 2° from the decree of the Bishop G.; 3° from the continuous exemption of the Church from the Conservatorio; and 4° from the restoration of the monastery, completed at the expense of the nuns; 5° from custom. Firstly, he maintained that the renunciation of the parish priest D., or the cession of rights, remained fully valid, and would continue to do so until a competent judge had not defined the matter to the contrary. He argued that this could be held to be safer, because it would not cause any detriment to the rights of successors, since in matters of funerals, the parochial right is limited to the fourth funeral, when the body is buried in a foreign church. *S. C. C. in Amen, funerum, 16 June 1827; in Ravennaten, funerum, 17 March 1781; in Viterben. Iurium parodi, 26 August 1826.* Therefore, the parish priest D. had only declared his intentions regarding honors and offices. Such a cession, moreover, can be maintained even without the permission of the Pontiff. *S. Rota in Caawrinen, nullitatis transactionis, 10 June 1850, cor. Card. Quaglia.* And even if it is admitted that the parish priest D. has relinquished the rights that he and his successors have acquired, nevertheless, the transaction that took place does not collapse, but serves as a conclusion to the dispute. *Greg. decis. 140 n. 4 et 354 num. 1; 2 Pignatell. tom. III consult. 50 n. 2 et 3.* Finally, if necessary, an apostolic approval can be obtained, if the matter is brought to the attention of the Most Holy Congregation. *S. C. C. in Faventina, Beneplaciti Apostolici, 20 January 1826.* Furthermore, regarding the decree of the Bishop G., it was noted that it was issued during the visitation, and although the signature is missing from the surviving copy, the entire document was written by the hand of the Bishop, and its existence cannot be called into question. Moreover, those who can erect new parishes, according to Trid. Sess. 21,

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Cap. 4, can, with just cause, do so much more easily.

[*Latin ed. p. 541*]

The PAROCHIAL status requires that certain things be demanded of the parochial jurisdiction, and that a chaplain be appointed for the parochial offices. However, the Church to which they belong clearly possesses the right of patronage, because that very Church is the one which the Order of St. Anthony, dedicated to St. Anthony the Abbot, formerly possessed; for that Church, after the dissolution of the Antonian monastery, passed into the property of the Seminary, along with all its rights and privileges: and, without any reservation, this was granted to the Seminary by Apostolic authority. And since it has never been a filial church, no parochial rights have ever been exercised therein by a parish priest. Furthermore, now that the Church has been granted independence with its own rector, it is fitting that, when confessors and those being educated are buried there, the funeral rites should also be celebrated there, according to the well-known principle that where the tomb is, there also the funeral rites should be; and according to the decisions of the Sacred Rites Congregation and the Sacred Congregation of Councils, among which the document *Pergulana* of January 29, 1825, is cited, which presents a similar matter (1). With these premises, it is affirmed that the funerals of novices or nuns are to be performed by the confessor, whether they are buried in the Church itself or must be buried outside the convent, according to what has been retained by the Sacred Council in the case of the Order of the Praeceptores, of January 24, 1846. The same is to be held regarding the laywomen, according to Pellizzario on Nuns (edition not prohibited), Chapter 10, number 233. Furthermore, Pellizzario states that the doctrine regarding laywomen can probably be extended to girls who reside in a monastery for the purpose of education, and this is because of the quasi-domicile that they acquire there. It should also be noted that those being educated are dependent on the confessor, as (1) In this *Pergulana*, the Sacred Congregation of Councils proposed the following questions: 1. Do the non-parochial functions in churches belonging to the Seminary pertain to the Rector of the Seminary, in the case of...? 2. Does the parish priest, within whose *fines* the churches of the Seminary are located, have any authority over the funeral rites of his parishioners who are buried there, in the case of...? 3. What portion of the emoluments is due to the aforementioned parish priest, on the occasion of the aforementioned funeral, in the case of...? 4. Does the parish priest have any authority over the funeral rites of non-parishioners in the church of the aforementioned Seminary, in the case of...? And the Sacred Congregation responded: To 1: "Affirmatively." To 2: "Affirmatively, and according to the form of churches that are *de facto* part of the parish, namely, up to the door of the church." To 3: "Affirmatively, the fourth funeral offering,

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according to the custom of the place." To 4: "Negatively, in all cases."

[*Latin ed. p. 542*]

542. THE PAROCHIAL RIGHT pertains to the proper parish priest, and it forms a single moral body with the nuns: therefore, they participate in its privileges. Furthermore, the Holy Office, in a decree of Pennen, July 6, 1737, decreed: "That girls who, for the purpose of education, reside in a convent of nuns, may be buried in the church of the nuns, but it is not necessary that they be buried in the parish church within whose limits that convent exists." Nor does the reason adduced to the contrary, namely, that they should be excluded from burial in a separate place because they are to be considered as guests and sojourners, hold. For, although they may not have chosen the convent as their permanent dwelling, they nevertheless reside there for a considerable and sufficient time, acquiring a quasi-domicile to which parochial rights are attached. And Fagnan, in Chapter 34, indicates that for someone to be considered a member of a parish of a church, it is sufficient that they have transferred themselves there for a reason that is not such that it can probably cease immediately. Moreover, to the contrary of the priest of Saint Angel, there exists a natural equity; for it would not be just for the priest to receive the emoluments of funerals, while he does not provide the last offices to the deceased girls. However, an argument of great weight in favor of the nuns can be drawn from the fact that they themselves restored the church of Saint Anthony the Abbot at their own expense, and practically rebuilt it; since nothing of the ancient church remains except the side walls. Indeed, it is stated in Riccio, in practice, p. 1, resolution 39, number 6, and in Ferraris, V, Burial, number 151, that the right and use of burial can be acquired by excavating a grave for the patron in the same chapel, without the opposition of the bishop and pastor. There is no reason why such a privilege should be denied to religious. In fact, it is known that the choice of burial has been solemnly made by the inmates: and, with regard to the girl Mary Simplicia, who had been delegated by her father, after the death of her brother, to choose the burial place, she chose the church of Saint Anthony. Furthermore, it is well known that parents have the right to choose the burial place for their minor children, provided that it is not forbidden by the customs of the place, as stated in Cap. VI, Barbosa, Apostolic Summa Decret., Burial, number 14, Cardinal Peter, to the Constitution of Honorius III, number 9.

[*Latin ed. p. 543*]

REGARDING PAROCHIAL MATTERS 543. To all these considerations, one must add the vows frequently made by diocesan Ordinaries and the practice, which the law does not invalidate, concerning public cemeteries. For this law has by no means taken away from regular and exempt churches the right to bury, nor the emoluments derived from funerals. The Sacred

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Congregation of Councils, in Decree 3, regarding the spoils of maintenance and restoration, of March 24, 1821, and April 14 of the same year, concerning doubt IV, concerning funerals, of June 23 and November 24, 1821, and in many other instances, has ruled against customs to the contrary, noting that in fact, the Conservatorium of St. Theresa within the parish of St. Angel in Fismes, did not even come into existence until the year 1822; indeed, if any such custom had existed, it would have lost its continuity through the cession of the parish. They also argued that the facts presented concerning other monasteries should be excluded. Finally, they concluded that, even if a different custom existed in the monasteries of St. Catherine and St. Clare, it could not be extended to the Conservatorium of St. Theresa; because a custom, which is strict law, does not extend from place to place, nor from person to person. See also the decision of the Sacred Congregation residing in Ferentino, of November 22, 1823, and in Terracina, concerning emoluments, of December 23, 1826. See also Quin. M. or on. Resp. Canon. 52, n. 7 and following. Césped, on exempt regular canons, Chapter 24, doubt 364, n. 16. Finally, they added that the facts presented concerning other monasteries were entirely specific and could not be used to derive anything contrary to canonical sanctions; and they cited the case of Ripatransone, of December 15, 1858, before De Magno, number 53.

OFFICIAL OBSERVATIONS. It was noted that the solution to this question depends on resolving the controversy as to whether the actual Conservatorium of St. Theresa is to be considered the same as that which the Sisters of the Blessed Virgin founded in their will. If the identity of both institutions is denied, then neither party can invoke the custom. If the identity is admitted, then it must be determined whether the privilege of exemption alleged by the nuns is clear and unquestionable, as was demonstrated in the case of the Fathers of the Congregation of the Oratory, in the case of Ripatransone, before De Magno.

[*Latin ed. p. 544*]

544. The rights of a parish are determined by the decree of the Most Holy Roman Church, issued on December 13, 858. Given the evidence of privileges, it is not sufficient for the parish priest to simply perform certain acts, nor is it sufficient for the intention of the law itself. However, if there is doubt about a privilege, even if certain contradictory acts occur, then the privilege should be maintained for the parish priest, because the assistance of the law prevails in such cases. Cardinal Petra, in reference to Constitution IX of Innocent III, section 1, number 55, and to Constitution I of Paschal II, section 1, number 39 and following, states this. Cardinal De Luca, in his treatise on tithes, number 15 and following, also affirms this. Fagnan, in his four books of decrees, on the subject of "Verhör," chapter 16, formerly number 15 and following, also states this. In a situation of doubt, it was proposed to consider whether an exemption should be granted, at least by

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grace, for the benefit of the parish. Since the parish priest of Saint Angel does very little work in the administration of the sacraments, for which reason the fourth funeral and other emoluments are granted to the parish priest, it was deemed not equitable for him to receive this compensation, given that very few individuals are found who belong to the parish of Saint Angel; therefore, it was decided that the funerals should be celebrated by the parish priest's own female assistants, which would cause considerable confusion. In addition to this, the information and constant opinions of all ordinaries were favorable to granting an exemption to the parish. However, it must be kept in mind that the parish priest, who administers the sacraments, can claim the right to burial whenever it pertains to him by right; but not when he does so by accident. Pignatelli, volume VII, section 63, number 8, states this. Nor is the administration of sacraments a sufficient reason for exempting a parish from the jurisdiction of the parish priest, otherwise such an exemption would apply equally to all parishes. Indeed, exemptions are granted to female parishes only in very serious cases, and often with some condition attached, in recognition of the authority of the parish. The Sacred Congregation of Councils, in Selina, April 27, 1765; Brictovien, November 26, 1768; Ferrarien, December 14, 1816; and the Sacred Congregation of Bishops and Regular Canons, in the case of the parish of Città della Pieve, July 3, 1676, regarding the rights of the parish priest, and August 18, 1843; and April 19, 1844, in large cities.

[*Latin ed. p. 545*]

REGARDING PAROCHIAL RIGHTS: Hospitals enjoy the benefit of exemption, but the sick who reside in hospitals do not remain there for a sufficient time to acquire parish membership. However, those who are educated, even if they retain their residence in Pescara, are considered to acquire parish membership in the parish of the institution, by reason of which they are subject to that parish, and the parish priest acquires the right to administer the sacraments to them. Considering these and other matters, the following questions are to be resolved:

I. Does the parish priest of St. Nicholas have any authority in the case of the "Conservatorium" of St. Therese?

II. Does the parish priest of St. Angel have the right to administer the sacraments and to bury the female boarders and girls who reside in the educational institution, and who die there without having chosen a burial place, in the aforementioned case?

III. And to what extent do the expenses pertaining to the parish priest of St. Angel apply in the case of the funeral of Mary?

IV. And how should one respond to the prayers for the granting of an exemption for the "Conservatorium" in the future, according to the form of the decree of Bishop G., and for the remission of the fourth part of the funeral expenses to be paid to the parish priest in the aforementioned case?

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RESOLUTION: The Congregation of the Council, having knowledge of the matter on January 25, 1873, responded as follows:

To I: Negatively, and furthermore.

To II, III, and IV: To approve the decree of Bishop G., having communicated with the Holy See, and the parish priest of St. Angel has paid the fourth part of the funeral expenses for Mary.

FROM ALL OF THIS, IT IS UNDERSTOOD THAT:

I. The common right of the parish priest is to administer the sacraments, which pertain to him by right, within the limits of his parish, and to perform funerals.

II. By common law, religious houses are exempt, such as monasteries of nuns, which have a commonality of privileges with them.

[*Latin ed. p. 546*]

546. OF PAROCHIAL RIGHTS. III. By the decree of the Ordinary, provided that there are grave reasons, even those pertaining to conservation may be exempted from the parochial jurisdiction. IV. Exemption may sometimes be granted to those living in communion, if they inhabit a monastery formerly possessed by a religious family, in whose own church, even with a change of personnel, the privilege of exemption has always remained intact. V. According to the opinion of many authors, the right of sepulture may be acquired through the construction or extensive restoration of a church, reserving the fourth part of the funerals for the parish priest. VI. Furthermore, the fourth part should be reserved for the parish priest in the case of funerals, if burial is chosen in the monastery. VII. The executor of a will ceases to have all power, except to the extent that he fulfills the will, and what the testator designates in his will as pertaining to the executor does not endure, especially if the testator has appointed the parish priest as his executor for a time. VIII. In this case, the Sacred Congregation granted an exemption, at least for the sake of the charity of Saint Theresa, to the Conservatorio.

[*Latin ed. p. 547*]

547. Regarding Suspension. On February 27, 1875. In the year 1870, the Priest Ludovicus S., the parish priest, was traveling in a carriage when, due to a sudden and accidental explosion of gunpowder, he lost his left hand; this explosion having so severely damaged it that it was necessary to have it amputated. Consequently, the Priest became irregular; but he obtained a dispensation from the Holy See. Nevertheless, the Archbishop, seizing this opportunity, paternally advised him to send a notification regarding his pastoral duties; which the Priest refused to do, not following the paternal advice. Meanwhile, it happened that in February of the year 1871, sev-

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eral complaints were presented to the Archdiocesan Curia concerning the turpitude of his life. From these, a process was instituted, from which the Archbishop asserted that the following emerged: 1. That he had attempted to undermine the peaceful cohabitation of a married couple through repeated and impious insinuations, with the intention of making the woman more inclined to enter into a scandalous relationship with himself. 2. That he had repeatedly solicited another woman to commit adultery with him, promising her, in return, to remove the obstacles that seemed to hinder her marriage to the brother of the aforementioned woman. 3. That he had impregnated a third woman who was in his service, and that he only persuaded a young man to marry her and acknowledge the child born from her by offering him a generous dowry. 4. That he had been living in a scandalous concubinage with two women for three years, one of whom gave birth to a child within the parochial house in the year 1870, and the other of whom was already visibly pregnant. 5. That he had attempted scandalous acts within the confessional. 6. Finally, that in a public inn, commonly called a "Lodging,"

[*Latin ed. p. 548*]

548. The suspension of the two young women will continue, and one of them, found lying in bed, will be subject to it. The Archbishop, considering it necessary for the good of his office, decreed as follows: "1. From the moment that this present decree is delivered to you, we suspend you from all sacred functions, without exception, in any place, and we remove you from all duties pertaining to the care of souls. 2. We grant you a benefit of one hundred florins from this day forward, from which day you will be specially informed. 3. We urge you to leave not only the parish of I., but also the entire territory of B., and to find an honest dwelling in some place outside the jurisdiction of B. Only when these conditions are fulfilled by you will we restore you to the benefice of C. R., so that, due to this unfortunate lapse, we may provide you with the necessary pension for your support. S. From this moment, upon the delivery of this decree, the care of souls in I. is transferred to the Reverend John F., to whom the Reverend Dean, by our mandate, will hand over the administration of the Church and the parish in the presence of two or more honest parishioners." The parish priest appealed to the ecclesiastical tribunal of Olomucense, established by the Holy See for this purpose; and through this appeal, the course of justice was somewhat altered. Indeed, after examining the matter according to the rules of Canon Law, this tribunal declared the process instituted by the Archiepiscopal court of L. to be invalid, because: 1. the defendant was never summoned to hear the witnesses, nor to swear them. 2. because, after the witnesses were heard, they themselves became accusers. 3. because the witnesses presented their testimony based on hearsay, and were not witnesses to the facts themselves. 4. because all avenues were closed to him

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for the purpose of defending himself, since the witnesses he presented were not heard. The Holy See revoked the previously issued decision regarding the deprivation of the parish, but left intact everything else that pertains to the administrative jurisdiction of the first judge. Then, the same accusers appealed this decision to the tribunal of Pragae, also established by the Holy See; but, with ill omens, and because the tribunal...

[*Latin ed. p. 549*]

549 The Olomucensi [Olmütz] confirmed the suspension, but wished to note that, with regard to the suspension, the Archbishop had rightly exercised his authority according to what was prescribed by the Holy Council of Trent, Session 14, chapter 1, concerning reforms; therefore, in this matter, the parish priest should appeal to the Holy See. Meanwhile, the parish priest presented petitions to the Holy Congregation [of the Council] requesting that the suspension imposed upon him by the Archbishop be lifted; these petitions obtain a dispensation from the irregularity, rendering them useless and futile. Upon receiving these petitions, a communication was sent to the Archbishop, instructing him to inform the Holy Congregation of the matter and to express his opinion. In addition to what has been mentioned above, the Archbishop, in his response, added that all revenues of the parish are currently received by the parish priest, with the exception of those designated for the celebration of Masses, and also those revenues destined for the maintenance and service of the Church; these are assigned to the parochial vicar, as a sort of personal compensation for his work and labor. Upon receiving the Archbishop's letter, dated July 8, 1873, it was written: "Let it be noted, and inform the Archbishop, who should warn the parties, and assign them a specific term to present their arguments before the Holy Congregation, and to be informed of the outcome." The Archbishop, having been informed of this by letter, reported that the parish priest had been accused of theft by secular tribunals, and that he was therefore awaiting the outcome of the judgment. Upon learning this, the Holy Congregation wrote: "To the aforementioned Archbishop, we request that he report whether the crime of theft in question is simple or qualified, and whether it concerns a matter of great or small value." The Archbishop responded: "The theft involved one hundred florins, which were taken from the chest; and the guilty party in this crime was sentenced to a punishment of imprisonment from six to twelve months." However, in recent letters, it was indicated that the parish priest had been acquitted by the secular tribunal. It was observed that, in defending this priest, the Holy Congregation had acted ex officio, and that the Archbishop's decree always appeared to be tainted with a flaw of nullity, so that the suspension

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in question should be considered...

[*Latin ed. p. 550*]

550. • Of suspension, whether it is a penalty. For if it is desired that censure be considered a penalty, it is undoubtedly necessary to observe the solemnities of law, and also warnings, especially to overcome obstinacy, according to the Doctors' opinion, and the disposition of the Council of Trent; particularly in chapter 6 of Session 21. Those, however, who live shamefully and scandalously, after having been duly warned, should be restrained and punished, and if, even after warning, they persevere in their wickedness, they should be deprived of ecclesiastical benefits, according to the constitutions of the Sacred Canons, and have any title removed from them. But if suspension is considered a penalty, then it is permissible that warnings may be disregarded, as is commonly held by Barbosa in chapter "De sententia excommunicat." in 6, number 5 and following; by Van Espen, volume 10, in the treatise "De recursu," chapter 3, paragraph 4, and volume 4, part 3, title 11, chapter 11, "De suspens."; by Monacelli, "Formular," law, page 2, title 2, formula 8, number 21; by Maschat, "Institutiones can.," book 5, title 39, paragraph 3, number 47; by Pignatelli, volume 10, "Consultationes," 10, number 3, and others. Nevertheless, either the judicial order should be observed, or at least the charges should be communicated to the accused, so that he may not be subjected to a very severe penalty without defense, which, indeed, everyone knows to be contrary to all equity. Therefore, since neither warnings nor the observance of the judicial order were observed in this matter, as can be seen from the history of the facts, it seems that the decree in this case suffers from nullity, and therefore, even in this respect, the judges of the appeal were compelled to annul it. It could not have caused them any difficulty, as stated in chapter 1 of Session 14 of the Holy Council of Trent; since it is clear from the documents that it could not have been issued either for reasons known to us or from informed conscience, as everyone knows is the custom and practice. Furthermore, that chapter does not seem to be relevant to the matter, since it speaks of hidden crimes, while in this case, public crimes were openly asserted. Much less relevant is chapter 1 of Session 22 of the same Council, since there, the Holy Synod commands that an appeal interposed does not suspend the execution of the sentence, as Barbosa states in the aforementioned passage. Therefore, it seems that the decree of the Court L. was null even with regard to the suspension, and that the judges of the appeal should also have annulled the process in this respect.

[*Latin ed. p. 551*]

It is true that the following points appear to be the opposite, but they should be considered: Although the decree of the Archbishop does not seem to have been issued either for reasons known to us or based on in-

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formed conscience, yet, from all the circumstances and additions, it may perhaps be said to have been issued in accordance with Chapter 1, Session 14, concerning Reform, of the Council of Trent. For it is clear from this that the Council granted bishops the faculty of imposing the penalty of suspension upon clerics for any reason whatsoever, even for a hidden crime, in any manner, even extrajudicially, as the common interpreters of the Holy Canons teach. Fagnan, in the chapter "ad aures" concerning the order, number 12 and following; Gonzalez, in "Decretal," book 1, title 11, in Chapter "ex tenore," number 15; Benedict XIV, in "De Synod. Dioecesan," book 12, chapter S, number 3, where he cites several resolutions of the Holy Congregation, among others, the Capritana of December 16, 1730, and the Gritan, or Tarentina, of August 20, 1735. Let Benedict XIV be heard in the place cited. The Council of Trent decreed: "Those to whom the ascent to the sacred Orders has been forbidden by their Prelate, for any reason whatsoever, even for a hidden crime, in any manner, even extrajudicially, or who have been suspended from their Orders, or from their degrees, or from ecclesiastical dignities; no license shall be granted to promote them against the will of their Prelate, nor to restore them to their former Orders, degrees, and dignities, or honors." From these words, it is gathered that the Bishop, for a hidden crime, even if known extrajudicially, can not only prevent the ascent to higher Orders, but can also forbid them from exercising the ministry of the Order they have already received; although, in the second part of the decree, where the word "suspension" is mentioned, the words "even for a hidden crime, in any manner, even extrajudicially" are not repeated, nevertheless, the constant and perpetual opinion of the Holy Council has been that, for the sake of continuity of expression, they are to be considered repeated, and that both cases are included. Therefore, it is possible for the Bishop, for a reason known to him, to forbid a cleric from both the exercise of the sacred ministry and from ascending to a higher Order.

[*Latin ed. p. 552*]

5;52. The reservation [regarding] the Grado [diocese] is such that neither can the cause of the suspension be held, nor can a manifest fault be proven against the accused, except before the Apostolic See, if the suspended party appeals to it. It does not seem to impede [this], that in the matter of the crimes, the offenses of the parish priest were not at all hidden, but rather public, as appeared from the process instituted against him. It may be observed that a clause in the law, for whatever reason, can encompass not only hidden matters, but also public crimes, as the Holy Congregation of the Council in Lucionen states, where, with the addition of authorities, it is decided that if public crimes are mixed with hidden ones, the Bishop can pursue the hidden ones, in accordance with the decree of Trent. However, in the case truly to be observed, those

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things which were imputed to the parish priest, and which gave rise to the cause of the suspension, were not at all public and notorious, but some were even hidden. Nevertheless, the Holy Congregation of the Council in Perugia, regarding the removal of the curate, on September 26, 1795, responded that the suspension should be maintained, in accordance with the aforementioned article 1 of Session 14, although the examination of witnesses had been held beforehand concerning the offenses. Therefore, it seems clear that not only did the Archbishop act properly, but also the judges of the appeal, and that it can be understood that the issued decree of suspension was not issued with informed judgment, since, besides what must be understood from its nature, it must be noted that such words do not come from the law, but rather from practice. Finally, if the words of the Archbishop's decree are seriously considered, it becomes manifest that the suspension was imposed outside the form of judgment: whereas, in the case of deprivation, the following words were used: "From the moment that the present decree of ours is accepted, we suspend you from all sacred functions, without exception, to be performed in any place, and we remove you from all concerns of souls." Regarding the deprivation, on the contrary, these words were used: "We deprive you, by the present decree, from the day that the present decree becomes effective, of which you will be specially informed." Therefore, it is clear that no legal formalities, no warnings, were to be given beforehand. Such an act does not pertain to contentious jurisdiction, but to political and correctional matters.

[*Latin ed. p. 553*]

It seems that the matter has reached its conclusion, the execution of which is left to the discretion and prudence of the Bishop. Since nothing is more contrary and harmful, especially in the spiritual governance of the Diocese, than scandal; therefore, it is prudent to leave it to the ecclesiastical magistrate to exercise his judgment, either in a judicial manner for offenses, or in a purely political and corrective manner, as Barbosa states in chapter 1 concerning the office and power of the Bishop; Gonzalez in chapter 28 concerning the office and power, numbers 2 and 8; and Berard, part 2, discourse 3, chapter 5 concerning suspension and censure. Therefore, it seems that the Bishop and the judges of appeal have acted well. With these and other considerations in mind, prudence and wisdom have led the Most Reverend Fathers to explain the following regarding the suspension: Whether the suspension should be maintained in this case.

RESOLUTION. The Sacred Congregation of the Council, after due consideration, responded on February 27, 1875: Affirmative.

FROM WHICH WE GATHER:

I. That the Bishop can, for reasons known to him, prohibit a cleric from

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the exercise of his sacred duties; and that he is not required to disclose the reason for the suspension or the offense to the accused himself, but only to the Holy See, in the case where the suspended party has recourse to it.

II. That, it seems, no prior warnings were required, nor any solemn legal formalities, since the action of the Ordinary pertains more to political jurisdiction than to contentious jurisdiction.

III. That the suspension can be considered in two ways with regard to its application: either as a censure, or as a penalty; as a censure, warnings are absolutely required; as a penalty, they are by no means required.

IV. That, according to the teaching of the Sacred Congregation, it seems that the Bishop can, by virtue of the decree of the Council of Trent, Session 14, chapter 1, pursue hidden offenses, even if public sins are mixed with them.

[*Latin ed. p. 554*]

554 FROM THE APOSTOLIC PENITENTIARY CONCERNING DOUBTS (1) DECLARATIONS REGARDING THE INDICTED JUBILEE.

I. If a church designated for fulfilling visitations to gain the Jubilee is so narrow that all the faithful who visit it in procession cannot enter; is the question whether those who cannot enter fulfill the obligation of the visitations?

R. The faithful who remain outside the doors of the church, or chapel, due to its narrowness, and who pray with others, morally form one body, and therefore fulfill the visitation required to gain the Jubilee.

II. A certain Ordinary inquired whether the visitations he makes, together with the Chapter and Seminary, to the four churches designated for gaining the Jubilee, wearing not choral but black vestments, and chanting in a subdued voice, can be considered as processions, and therefore whether he can reduce the number of visitations, as he is able to reduce those made in procession.

R. As far as processions cannot be made in the usual manner, affirmative.

III. Can religious gain the Jubilee by performing the visitations prescribed for that purpose in their own church?

R. Negative.

IV. A religious who has already fulfilled the visitations in his own church, as mentioned above, and is obliged to repeat them, can he... (1) Other similar matters are found on pages 266, 359, and 485 of the present volume.

[*Latin ed. p. 555*]

STATEMENTS CONCERNING THOSE WHO HAVE NOT YET RECEIVED THE BENEFITS:

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Q. Can one avail oneself of the privileges granted by the Encyclical concerning Confession, if one has not yet made use of them?

A. Affirmative.

Q. Does one satisfy the twofold precept of annual Confession and the Jubilee by approaching the confessor twice in succession, in order to receive a single absolution?

A. Negative.

[*Latin ed. p. 556*]

556 CONCERNING THE JUBILEE YEAR OF THE RUSSIAN EMPIRE: Moved by paternal solicitude, and considering the grave circumstances in which Catholics living in the Russian Empire find themselves, and desiring that all the faithful residing in the same Empire, among whom the Apostolic Letters concerning the Great Jubilee could not be promulgated, may enjoy the benefits of the proclaimed Jubilee, and may, as far as possible, attain them, the Most Holy Pope Pius Ninth declares, through the office of this Holy Penitentiary, to all Ordinaries, Parish Priests, and Confessors of the aforementioned Empire, who are duly approved and have communion with the Apostolic See, that they are granted the necessary and appropriate faculties, so that, with the favor of the aforementioned faithful, they may, for the purpose of achieving the effects of the Jubilee, reduce, or, as necessity demands, convert the works prescribed for it into other works of religion or charity, preserving, where possible, the visitation of some church or public oratory, and maintaining firm all other Apostolic dispositions concerning the same Jubilee, which are contained in the Encyclical Letters published on December 24th of the past year, both concerning the Sacraments of Confession and Holy Communion, and concerning other graces and faculties granted for the spiritual benefit of the faithful, on the occasion of the same Jubilee, notwithstanding any individuals and those especially worthy of mention to the contrary.

Rome, from the Holy Penitentiary, on May 7th, 1875.

A. C. Panebianco, Priest Master of the Sacred Palace.

L. Peirano, Secretary.

[*Latin ed. p. 557*]

To the Archbishop of Naples, and to the Venerable College of Theologians, concerning the desire to establish the Angelic Doctor as the Patron of all Universities, Gymnasiums, and Colleges. Pope Pius IX. Beloved Son, Venerable Brothers, and Beloved Sons, Greetings and Apostolic Benediction. No one is more fitting to be commended for the highest literary pursuits, the discipline of learning, and the entire breadth of knowledge, than that Saintly Doctor, who, endowed with an almost angelic intellect, wrote so eloquently about human and divine matters that he deserved to be clearly approved by our Lord Himself. Therefore,

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we praise the desire by which you request that he be established as the Patron of all Universities, Gymnasiums, and Colleges; but, since these desires encompass the entire world, we are pleased to note that it should be sought everywhere that matters are rightly decided by those to whom they pertain. Indeed, the widespread contention that we happily observe suggests that the philosophical and theological disciplines should be urged towards the scholastic method, and that such requests should be made more frequently; which will certainly lead to the Holy Doctor receiving, with far greater splendor, the universal patronage of studies from this Holy See. We do not doubt that He will, from Heaven, bestow abundant grace upon your excellent desire, and that He will be present at your meetings and labors, so that you may all deserve to be considered true and worthy disciples of Him. In the meantime, may you anticipate heavenly favor, and as a pledge of Our special benevolence, We bestow upon you all the Apostolic...

[*Latin ed. p. 558*]

558 APOSTOLIC LETTERS: We impart the Papal Blessing with paternal affection. — Given in Rome, near St. Peter, on the 3rd of May, in the year 1875. — In the Twenty-Ninth Year of Our Pontificate. — PIUS IX, POPE. To the Most Beloved Son, Xystus, Cardinal of the Holy Roman Church, Riario-Sforza, Archbishop of Naples; to the Venerable Brothers, Prelates; and to the Most Beloved Sons, the Illustrious College of Theologians of Naples. TO THE CLERGY, WHO, ENGAGED IN SPIRITUAL EXERCISES, SENT LETTERS FILLED WITH FILIAL AFFECTION AND FAITH TO THE POPE. PIUS IX, POPE. Beloved Sons, Health and the Apostolic Blessing. If the Spirit of God is a Spirit of concord and unity, we rejoice with you, Beloved Sons, that it has been abundantly confirmed in your hearts, and has been so generously poured forth that it is clearly revealed in your letters. This is what the Apostle most desired from the faithful, whom he perfectly desired to be united in the same sentiment and with the same understanding; and we are pleased to observe this in you, whom we know to be so devoted to this Chair of Truth, that you have rather chosen to endure any hardship than to deviate from its obedience, its teachings, its documents, or its principles. We are indeed beset on all sides by a fierce war; but if our faith is the victory that conquers the world; if we all feel and say the same thing with the same charity, then we will surely confound the enemies of God and the Church, and render their efforts futile. Therefore, we have received with the greatest pleasure and gratitude your services and the gift by which you wished to confirm the sentiments of filial piety towards us; especially since such zeal for this Chair of Peter seems to be a sign of the fruit of your ministry. We therefore wish you the greatest blessings for your souls, and, as a pledge of our paternal benevolence and under the auspices of heavenly favor, we impart to you all, Beloved Sons, the Apostolic Blessing

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with paternal affection. — Given in Rome, near St. Peter, on the 29th of March, 1875. — In the Twenty-Ninth Year of Our Pontificate. — PIUS IX, POPE.

[*Latin ed. p. 559*]

559 APOSTOLIC LETTERS TO A BELOVED WRITER, OUR SON, THE PRIEST, EDITOR OF "L'Unità," JAMES OF TURIN, TO WHOM WE HAVE GIVEN THE TITLE "Cattolica," FROM POPE PIUS IX. Beloved son, greetings and apostolic blessing. Among the many excellent testimonies, by which the children of the Church have declared their obedience and affection to Us, on the anniversary of Our birth, We have gladly received the wishes, congratulations, and gifts, which the faithful of this region of Italy, with the prelates at their head, wished to offer to Us through your ministry, and which are worthy of eternal remembrance, preserved in precious volumes presented to Us reverently by our beloved brother, your companion, in this esteemed city. Truly, this public expression of piety and love was pleasing and delightful to Us, which certainly would not have been so remarkable and splendid, unless the love for the Catholic religion burned intensely and deeply in the hearts of the Italians, and unless, beloved son, that fervent zeal flourished, by which, from ancient times, they have diligently and zealously served the cause of the Church. Therefore, receive in these letters a new testimony of Our praise and special affection, and, on Our behalf, pour forth the sentiments of Our paternal charity and most grateful will upon all those who, through your efforts, have offered their wishes and gifts to Us, and who strive so earnestly to console Us. Let them know, through you, that We are deeply delighted by the magnificent displays of their faith and piety, which adorn and beautify this suffering Italy, and which cause Us to regard them as a joy and a crown. From the most merciful God, We beseech that He may regard and protect them all, and this region in particular, and that He may grant them abundant rewards for their merits towards Us, and solid strength to successfully overcome the enemies who have risen up against the Lord and against His Christ. May it be so.

[*Latin ed. p. 560*]

560 APOSTOLIC LETTERS, a pledge of all blessings and a guarantee of Our most ardent charity, Our apostolic blessing, which We impart most earnestly and from the bottom of Our heart in the Lord to you, beloved son, and to all the Pastors and faithful, whose offerings We have received through you as their advocate and interpreter. Given in Rome, near St. Peter, on the 19th of May in the year 1875, in the twenty-ninth year of Our Pontificate. PIUS, POPE IX. TO THE REVEREND FATHER D'AVANZO, BISHOP OF CALVI, NEAR THEANEN, CONCERNING THE LATIN LANGUAGE. PIUS PP. IX. Venerable Brother, greetings and Apostolic Blessing.

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We have received with great pleasure the benefits of the Jubilee, which We have decreed for the entire Catholic world, and We trust that, with divine favor, a rich fruit will result therefrom. We gladly receive the sentiments of mind that you have expressed for this purpose, and We offer them to God, so that He may grant to your dioceses the benefit corresponding to the joy you have conceived. We also have received your most learned letter, carefully composed, concerning the mixed nature of the Latin language. For it is rightly asserted therein that the dignity of Christian Latinity is vindicated, which many have imputed to be a corruption of the ancient language; while it is evident that the language, as the expression of the mind, of morals, and of public affairs, necessarily had to assume a new form after the law promulgated by Christ, which, as it had raised and directed human society towards spiritual things, so it required a new character of speech, distinct from that which the carnal society, devoted only to worldly things, had long maintained. To this observation, your diligent enumeration of the monuments of each century of the Church spontaneously lends support; for while these bring the beginnings of the new form before our eyes, they also...

[*Latin ed. p. 561*]

Regarding the progress and excellence of the Apostolic College, it has consistently taught that the youth of Latin lands should be educated through the reading of a mixed selection of sacred and classical authors. This endeavor of yours, which has illuminated a previously obscure discussion, will also encourage educators of youth to utilize the works of both types of authors for their benefit. We foresee success in your work; and in the meantime, as a sign of divine favor and a testament to our special benevolence, we impart the Apostolic Blessing to you, Venerable Brother, and to your entire clergy and people. Given in Rome, at St. Peter's, on the 1st of April, in the year 1875, in the twenty-ninth year of Our Pontificate. PIUS PP. IX. TO OUR DEAR SON, X[Y]STO, TITULAR BISHOP OF SABINA, SECRETARY OF THE HOLY CONGREGATION, CARDINAL, AND ARCHBISHOP OF NAPLES. Pius PP. IX. Dear Son, greetings and the Apostolic Blessing. With the all-powerful God permitting, and in order that those who do evil may still do evil, and those who are in filth may still be filthy, until He comes to render to each according to his works, We lament that certain sons of iniquity have arisen in this region, who do not fear to cause grave scandal to the Christian faithful, and who seek to disturb the unity and communion of the Catholic Church here. We know, and You Yourself grieve with Us, Dear Son, that certain deserters of the Faith and of regular discipline have progressed to such temerity in this place, that they have dared to put forth their plans to establish a nefarious sect or faction under the title of the "Italian National Catholic Church," and, having established certain regulations, which they call dogmatic and

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disciplinary, they have even designated a head and pseudo-pastor who, under the title of "First Bishop," with an assistant, to whom the title of "Bishop" is added.

[*Latin ed. p. 562*]

562 APOSTOLIC LETTERS from *palis* state that a certain dignity is to be conferred, and that the General Vicar should preside over this group. These impious schemes could not fail to cause us grave and bitter pain. For you know that this insane conspiracy aims to sow tares in this part of the Lord's field, and to corrupt the faith of those people who have always preserved the Catholic Religion, received from the Prince of the Apostles, intact and inviolate. And if one were to examine the very head that is intended to lead this faction of wicked men, his wickedness and perversity would become even more evident. For we have learned that a certain *Dominicus Panelli*, a cleric from Naples, known to be an apostate from the Catholic Religion, has been appointed to this office. He had already been subjected to the bond of suspension for his sacrilegious acts and was subject to irregularity. Much more could be said about this man, but since his actions, which reveal his singular impiety, duplicity, falsehoods, and recklessness, have been made known to the public, largely through documents and, in part, through his own confessions, we will not dwell on them further. However, we believe it is necessary to mention this: that the same man, having been rejected by the Higher Orders in this city for a lack of necessary doctrine, migrated to the East among the Greek Schismatics, and there, by adhering to schismatic perversity, completed his shameful defection from the Catholic Church. Then, claiming to wish to reconcile himself with the Catholic Church, he affirmed that he had received priestly ordination and episcopal consecration among the schismatics, thus attributing the force of ecclesiastical ordination and consecration to a certain clandestine and secret ceremony, which was preceded by profane banquets; and he requested that his priestly ordination be recognized by this Holy See. At that time, an examination of this matter was duly instituted by our mandate from the Supreme Congregation of the Inquisition in Rome, and, after a careful and thorough investigation, that Congregation issued a judgment, which was also approved by our authority, that the ordination and consecration of the aforementioned *Dominicus Panelli* are in no way valid; and therefore, he is...

[*Latin ed. p. 563*]

APOSTOLIC LETTERS 56: Concerning the number of Clerics and the perpetual unsuitability of certain individuals for the exercise of any Order. Indeed, from those things which we have briefly indicated, it is clearly evident what are the designs, who are the instigators, and from whom the snares are laid for the faith of this people. And since, in such matters, our

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paternal love for our sons and the reason of the highest ministry do not permit us to remain silent, We, beloved Son, in order to confront the scandal and to ward off the wolves who meditate the ruin of the flock of Christ, have considered it necessary to adopt, without delay, a measure which, according to the prescription of sacred canons, and following the example of Our predecessors, the Roman Pontiffs, we know to be available to us. Wherefore, by Our supreme Apostolic authority, We detest, condemn, and reject that schismatic and heretical faction which assumes the title of the Italian National Catholic Church, and which, by its very actions, denies that there is one faith, one Church, and one visible head thereof established by Christ the Lord, and which dares to erect here a new and profane edifice of human religion, according to the elements of the world and the opinions of this age. Furthermore, by the authority of Almighty God and of the Holy Apostles Peter and Paul, and by Our own authority, We excommunicate and anathematize, solemnly, through these letters, Dominicum Panelli, the apostate, who does not fear to become a trap for the ruin of the people of God and an offense of iniquity, and all others who, through his temerity and apostasy, render him any help, assistance, counsel, consent, or favor, whether they have done so or shall do so. And We decree that he and the aforementioned are to be separated from the body of the Church, and to be avoided by all, absolutely. Now, while We have considered it necessary to perform these studies and duties of Our Apostolic care and charity towards Our most beloved faithful, of whose religion and devoted will towards Us and this Apostolic See we have recently received new and illustrious testimonies, We cannot but include you, beloved Son, whom We have called to share in our concerns, in this...

[*Latin ed. p. 564*]

564 To join your zeal and efforts to our concerns, we urge you to stir up those same faithful to guard against any contagion of wickedness. Therefore, you should warn them to be wary of the snares of fraud and injustice, which lead to their ruin; remind them that heresies and schisms are permitted by God so that the elect may be tested; and that nothing could be more excellent and salutary for them than to diligently strive in this wickedness of the world, so that "their faith may be proved much more precious than gold, which perishes, because it is proved by fire, to the praise and glory and honor of Jesus Christ." And indeed, if, in this most serious matter, we are compelled to use spiritual weapons against the workers of iniquity, we must not forget that we fulfill our mission for Christ, who came to seek and to save that which was lost. Therefore, we do not fail to warn and exhort them, by the bowels of our God, by the coming of our Lord Jesus Christ, to seriously consider what our Redeemer said: "Woe to the world because of scandals. For it must needs be that scandals come." And immediately to turn away from the path of perdition, and to avoid being among those

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of whom the Prophet foretold, as sad experience teaches, that "Let their way become dark and slippery; and let the angel of the Lord pursue them." But that God may illuminate the minds of those who are merciful with His light and soften their hearts, we will ceaselessly pour forth fervent prayers before Him: But if there are those among them who, because of the measure of their iniquity, wish to sink deeply, and do not admit any desire to emerge, let us pray to God that He may restrain the abominable wound in them, and that He may not infect any part of the healthy flock. To you, and to your clergy and faithful, we implore from the heart, that the power and splendor of God may be constantly upon you, and that grace may be multiplied to you, and peace; as a pledge of these heavenly gifts, and as a token of our special benevolence, we impart our Apostolic Blessing with all the affection of our heart, in the Lord. Given at Rome, near St. Peter, on the 3rd day of July, in the year 1875, in the thirtieth year of Our Pontificate. Pius PP. IX.

[*Latin ed. p. 565*]

565 FROM THE SACRED CONGREGATION FOR THE COUNCIL'S SUBSIDY, dated February 27, 1875. Summary of the case. Eleonora M., a pious and noble woman, in the last pages of her will, in the year 1724, established a charitable work intended for providing dowries to young women who wished to dedicate themselves to a religious life. Among these young women, she established various categories; she wished that, at any time, the firstborn daughters of six families, which she herself designated, should be given preference; then she called for young women from three other families, which at the present time have completely ceased to exist, and in their place, she substituted young women of the city of F, regarding whom it is debated whether they should be considered to belong to the noble class. It is stated that she wished that the firstborn daughters of the aforementioned six families, if they were to choose young women to take the place of those last in line, should choose young women who were poor and miserable (in the authentic documents, it is written "dome" poor and miserable). Adeles N., adhering to the provision of the last paragraph, although she was a young woman of honest, but humble, birth, presented a petition to the Most Reverend Archbishop of the Archdiocese of F, so that she might obtain a charitable subsidy. For she herself, being poor and miserable, had been residing for several months in the monastery of the nuns of St. Clara in the town of G., in the same Archdiocese, burning with the desire to dedicate herself perpetually to a religious life. The patrons, questioned by the Archbishop regarding these requests, gave various opinions; for two were entirely opposed to the petition, a third preferred to abstain from expressing an opinion, a fourth promised to adhere to the decision that the Archbishop considered appropriate, and a fifth agreed

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only.

[*Latin ed. p. 566*]

566 The grant of the dowry was expressly approved by the prayers of the petitioner. Finding a discrepancy in the opinions, it was not permissible for him to decide anything in the matter, and he considered it necessary to inform the petitioner. Therefore, the aforementioned petitioner presented her prayers to the Most Holy Congregation on January 26th of the current year, requesting that, notwithstanding the variety of opinions of the patrons, she might be granted the spiritual dowry of the pious testatrix M. Such prayers were referred to the Most Reverend Archbishop, so that, after hearing those who had an interest in the matter, he might report on the validity of the petitioner's claim. The Archbishop, acting according to custom, confirmed what had been previously stated; and after presenting the matter in the presence of all the patrons, except for the Reverend Father G., who fully adhered to what he had stated in the previous year, it was deemed necessary to grant the petitioner's request. He revealed his opinion extensively and learnedly; which, as a strong defense of the petitioner, is related below. Upon receiving these letters, it was considered appropriate to discuss the case in the plenary sessions of the Sacred Congregation. The discussion was concise. The patrons placed all the force of their arguments in demonstrating that no girls born of humble origins in the City of F. had the right to receive such a dowry grant, unless they were either from testamentary records, or from a document signed by His Holiness Pope Benedict XIII, or from the very amount of the dowry, namely five hundred scudi, or from a custom lasting more than centenaria years, or finally, from several very serious reasons, by which the pious work of charity would be harmed if the petitioner's prayers were granted. And first, with regard to the testamentary records, the patrons observed that only girls born of noble lineage were mentioned in the will. It says: "Furthermore, I wish and command that the eldest sons of the aforementioned families must choose six girls, who are of low degree, poor, and miserable, and therefore not legally entitled to an inheritance, as the petitioner claims." And they proved this to be the true reading, either from certain testaments. WHICH SUPPORT THE ARGUMENTS OF THE PATRONS.

[*Latin ed. p. 567*]

SUBSIDII DOTALIS 5 67, according to examples of wills, or, more especially, according to the testimony of those entrusted with preserving ancient public records, from which it is deduced that the word "Dame" is found in the original documents. Having admitted this reading, the genuineness of which is clearly evident from the authentic documents themselves, it follows that only girls of ignoble birth would be admitted to this subsidy, unless contrary to the express will of the testatrix. For it is well

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known that the word "Dame" carries with it a connotation of nobility, and is reserved only for women of illustrious birth. Therefore, if the words are to be understood in the sense they spontaneously suggest, then Adele, the orator, who is descended from humble parents, cannot in any way be admitted to such a subsidy. It is of no avail to object that the aforementioned paragraph of the will appears to be entirely superfluous if the word "Dame" is understood to denote both poor and noble girls, since it already mentions these girls in the third paragraph. It is certain that the testatrix had at least in her mind a distinction between "gentildonne" and "Dame" considered in the third place, and between simply "Dame" placed in the fourth place; and perhaps, when calling in the third place "so many legitimate and natural girls, poor and miserable and honest, and who are "gentildonne" and "Dame" of this city," she meant girls distinguished by some title of nobility; while, when calling in the fourth place "other girls who are simply "Dame," poor and miserable," she admitted girls who are simply noble, that is, lacking a title of nobility, to the subsidy. However, whatever the reason for this distinction may be, it remains fixed and immutable that Adele, the orator, cannot be counted among either the "gentildonne e Dame" or among the "Dame" simply. Therefore, it is of little or no consequence to object that the testatrix intended to call the humble girls in the fourth degree because, for these, the testimony of the Parish Priest was sought, while for the noble young women mentioned in the preceding degree, since they are considered sufficiently known by their patrons, the Parish Priest did not require any document. Indeed, such a difference is not sufficient to constitute a different species of persons; it is a simple method, which sub-

[*Latin ed. p. 568*]

568. The dotal provision does not affect the standing [of the beneficiaries]. Furthermore, this method can be explained in some detail concerning the selection of girls in the fourth place, if we suppose that the testatrix designated girls of noble birth, but lacking a title or, rather, of humble means. Proceeding to the second argument, they state that a few years after the death of the testatrix, six prelates presented a petition to the Most Holy Office, in which they sought that the fruits of the pious work, as Eleonora M. had prescribed, should not only be applied to spiritual endowments, but also to temporal endowments, so that none of the girls who were called in the three preceding categories would wish to embrace the monastic life. However, this petition was opposed not by girls of humble origin, but by noble, poor girls, in order that even they might enjoy this change. And the Most Holy Office, after considering the testamentary documents, hearing the information of the Ordinary, and also taking into account the opposition of those noble, poor girls who had a right to the spiritual endowment, granted the change in favor of the poor and noble young women, with-

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out mentioning anything about the humble [girls]. Subsequently, Benedict XIII, the Supreme Pontiff, in his Chirograph, in which he granted the same grace of change, after reciting almost the same words of the testatrix, distinguished three categories of poor, noble girls, and granted them the benefit of the change, without mentioning anything about the humble girls. Hence, the rescript of the Auditor of the Most Holy Office, which immediately followed the Pontifical Chirograph, returned to the very same meaning. For it granted to the firstborn [daughters] the faculty "in all and every case, in which in their families... or in all other noble, poor, and miserable families... there were not girls who wished to take the monastic habit... to permanently grant the sum of 500 scudi... for establishing and assigning a temporal endowment to girls descended from all the aforementioned families, preserving the order of precedence." From this, they deduce that the girls called in the third and fourth places, and distinguished by the testatrix into two classes under one general category, are...

[*Latin ed. p. 569*]

SUBSIDII DOTALIS 569 were understood by the Pope, and then by his Auditor, to pertain to the category of poor and noble young women. Therefore, it is concluded that young women of the common people have no right to receive a dowry, either temporal or spiritual, from the pious foundress, Eleanor. A third argument is drawn from the quantity of the dowry, which absolves a few. Indeed, they say that a dowry of five hundred Scudi clearly indicates that the foundress left this dowry only to poor, noble girls. Moreover, if such a sum of money completely surpasses the dowry of humble young women, whether they are destined for a carnal or spiritual marriage, then... Furthermore, in the hypothesis of the opponents, it would have to be said that the pious foundress, being imbued with the customs of the nobility, established precisely the same sum for the dowries of noble girls as for the dowries of those from the common people. Hence, it came to pass (and this constitutes the fourth argument) that, from the year 1724, when the pious work began, no such dowries, either temporal or spiritual, have ever been granted to ignoble girls; indeed, no one, except for Adèle, who was not among the nobles, has ever requested such assistance, so that, for the first time in memory, Adèle has raised this controversy. But these prayers (they attack the final argument), if once accepted, they say, would cause the entire work of the foundress Eleanor to collapse. For, up to now, it has remained immune from government administration, both because the property of the pious foundress belongs to six designated families, as stated in the will, "that all the aforementioned revenues should always remain as a fund for noble girls, and that the fruits should accrue to the benefit of the aforementioned girls from the day after the foundress's death," and also because the noble and poor girls do not constitute that truly miserable class, whose rights must be protected and preserved, according to the laws

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of the government, and which have been entrusted to the Congregation of Charity and the Provincial Commission. But if ignoble girls were admitted to this assistance, then there would be absolutely no reason by which the Patrons could exempt this work from the administration of the government.

[*Latin ed. p. 570*]

570. HOWEVER! It has come to pass that this pious Institution has been able to preserve itself from suppression and confiscation by demonstrating that it provides dowries not of a spiritual nature, but solely temporal ones, to poor noble girls. But if the Oratrices were to obtain the approval of the Holy Office and the Government were to be informed (which certainly could not be avoided, since the matter concerns something that affects the entire population), the confiscation could not be avoided, if indeed there were to be a certain fund by which the suppressed monasteries could be maintained and supported. Finally, they concluded their argument by noting that an agreement had been reached to distribute temporal dowries to young noblewomen of established families and others, if a class of unknown women were to be admitted for assistance, provided that the number of unknown girls who adhered to the monastic life was large; and since the spiritual dowry should be granted before the temporal one, the poor noble girls who were entering into temporal marriage would then be excluded from all dowries. In this case, the patrons, eager to consult with their families about the funds left by Eleanor, would reclaim them, albeit with a fair spirit, and thus prevent the unknown girls from receiving any dowry assistance. For the pious work strives, as far as it is able, to defend itself, and to explore all means, even by bringing the case before a secular tribunal, if necessary, so that the charitable work, from which so many benefits flow, is not destroyed before their very eyes. Since this would be extremely difficult for them, the E.E.C.C. (Most Reverend Chapters) have implored them to remove all danger by defending their rights.

THOSE THINGS WHICH FAVOR THE ARGUMENTS OF THE ORATRICES.

The Archbishop, who is undertaking to defend the arguments of the Oratrices, first of all stated that this matter concerns only a legal issue, and therefore the consequences that are being demanded are not something that the patrons would be unwilling to consider. Regarding the legal arguments presented by the patrons, he responded accurately and learnedly as follows: "Having considered the reading (namely, the word 'Dame' and not 'Domine')," the authenticity of which has only been revealed from the original documents after this controversy arose (since in previous texts...

[*Latin ed. p. 571*]

SUBSIDII DOTALIS 571: I was greatly able to doubt concerning this,

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from the varying readings of the manuscripts, concerning the clauses of the testament), but the question is not yet resolved, since it still remains to be considered, in what sense the testatrix used this word. For although it is true that in its common meaning, the word is reserved only for women of noble birth, and otherwise the words should be understood in the sense that they spontaneously suggest, nevertheless, a particular usage, either in force at some time or place, or the intention of the speaker, sufficiently made clear by the context, could impose a different meaning on the words. In the matter itself, there are certain indications by which it is permissible to suspect that the word "Dame" in the intention and meaning of the testatrix does not at all imply nobility of birth. And the reason (if I am not mistaken) is sufficiently valid from this very fact, that the entire paragraph of the testament would seem useless if the word "Dame" were to be understood in the sense that the patrons defend. For in the preceding paragraph, in the third place, the testatrix called all the girls, both noble and poor, of this City, so what need was there to again substitute girls of the same kind, both noble and poor, in the absence of those? Certainly, no objective distinction (which is based on a solid foundation) would arise between the girls mentioned in either paragraph from the testament, if the latter were also to be distinguished by nobility of birth. On the contrary, it is clear that the testatrix has placed a great distinction between the two, not only from the substitution of the latter for the former, but also from the different method of selection that she established for each. Examining this method more closely, we find that the form of selection for the girls mentioned in the third place is appropriately suited to young women of noble birth, who should be sufficiently known to the patrons; "This selection," says the testatrix, "applies to the firstborn of the aforementioned six houses"; while the method established for the girls admitted in the fourth place gives an indication that we are dealing with young women of obscure birth, since for their selection, the testimony of all the parish priests must be sought. "From this," are the testatrix's own words, "it must be understood..."

[*Latin ed. p. 572*]

"Furthermore, it is stated that those who are of age and are the firstborn shall be considered in relation to all the Curate Lords of this City, and that those who are to be chosen shall be the poorest and most miserable, and the oldest. And this is not enough, for another indication, drawn from another part of the testament, supports this opinion, in which the Testatrix orders that from the price obtained from the sale of silver furnishings, eight dowries be established for certain designated women, among whom, in the last place, is mentioned a certain Zita... – a girl who resides in the house of Ursula, daughter of Thomas, called Tomassetto. In this matter, three things are to be noted: first, that the other legatees are indicated by their proper name and surname, along with the name of each of their fathers

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and mothers, while the last one has none of these; second, that it is expressly stated which house and in which dwelling place she resides, and with whom she lives; third, from the parochial records, it is discovered that the aforementioned Ursula was accustomed to keep with her certain girls, who are called the daughters of Saint Mary (by which name girls of uncertain parentage were designated), and that in the very year in which the testament was drawn up, only one of these was with Ursula. All of these things clearly demonstrate that the aforementioned Zita, being named in the eighth place among the legatees, was a girl of uncertain parentage, and that she was not indicated by her proper name and parentage only for this reason, because her parents were unknown. Indeed, it is true (I confess candidly) that in the parochial records, the girl who resided with Ursula in the year 1724 is designated by the name Dorothy, but since no one other than Dorothy resided in Ursula's house that year, and since there is no trace of Zita in the parochial records, it seems that Zita was the name given by the Testatrix, and that she is the same person as Dorothy. Moreover, it seems that the name Zita is not a proper name, but rather a descriptive term, used in the sense in which it is customary to call all unmarried girls..."

[*Latin ed. p. 573*]

CONCERNING the DOTAL portion *)7o -p (as the diminutive "Zitella" suggests), it applies to her. This "Zita," however, is certainly not distinguished by any great nobility of birth; indeed, in a certain copy of the will, she is expressly called "dama": therefore, it is written - "and Zita, dama, is the pupil, etc." Consequently, a clear argument arises for understanding the testator's intention; if the testator uses the word "dama" to refer to girls who lacked certain parents, it follows that in the testator's mind and understanding, the word does not necessarily imply any great nobility of birth.

Nor does it present a difficulty, as some might suggest, that the word "dama" is not found after the name "Zita" in either the authentic or original documents of the will, nor in another copy that is available; for it must be known that in the aforementioned authentic documents, which are to be carefully considered, after the name "Zita" there is a clear erasure, and above it, the word (it seems) "Dorothea" was added. However, while the addition of this new word clearly indicates that Zita is the same as Dorothea, it does not equally prove that the word "dama" was not originally present. Indeed, since the words "Dorothea" and "dama" are very different, so that a scribe's error could not lead to one being substituted for the other, and since in the aforementioned copy the word "dama" is present, and since the word "Dorothea" is certainly an addition, it must be said that the word "dama" in that copy derives from the original (before it was erased).

Finally, a third copy, as I have been told, also lacks the word "dama," but

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immediately after the name "Zita" is found the abbreviated word "Dornen'," a reading which I do not know how to reconcile with the original, or with another copy, or indeed with the parish records. However, the abbreviation of the word "Domenica" might perhaps originate from the fact that in the transcription of that same copy, the space between the two words "Zita . . . Alumna" was empty, and at a later time the word "Domenica" was added, which was abbreviated because a larger space would have been required for it. And this might be argued from the fact that in *Acta*, Volume VIII, page XCIV, 37.

[*Latin ed. p. 574*]

574 SUBSIDIUM DOTALIS 3 » although the letter O (the initial letter of the word *Donne*) appears to express the same meaning as the other words, whether preceding or following; however, the subsequent letters seem to be written with a slightly different ink (namely, one that is somewhat weaker). Therefore (and to conclude briefly what has been explained more fully thus far), if we are compelled to admit the word *Dame* in the will, it is not therefore that girls born of a humble lineage should be excluded from the pious Moronian work, since the word *Dame* bears the same meaning in the sense of a *Testatrix* as the word *Donne*.

« Furthermore, two Patrons, by the Chirograph of the Most Holy Pope Benedict XIII, granted, a few years after the death of the Testatrix, indulgences to six prelates, so that the fruits of the pious work might be applied to even temporal dowries, in order that none of the girls mentioned in the three preceding categories by the Testatrix might wish to embrace monastic life. However, if no mention is made in the aforementioned Chirograph and subsequent decree of the Auditor of the Most Holy [Pope] concerning girls of the least noble standing, it is to be noted that no word is made in those documents concerning the fourth category established by the Testatrix. And I believe that this was done for this reason, because it was not possible to agree to every petition; but the petitions were given only in the names of families established in the two preceding categories. And if consideration was given to even noble girls, it was because poor nobles opposed those petitions of those families, an opposition which was lacking on the part of the poor, non-noble families.

« Finally, the custom is unanimously asserted by four Patrons, stating that during the entire time that has elapsed since the death of the Testatrix until the present, no girl born of a humble lineage has ever received this dowry subsidy; and they consider this to be a manifest indication that such a right was never recognized for girls of that kind. However, I do not know whether this can be asserted with certainty; nor do I think that it would be easily conceded that the silence of these girls could be explained solely by this reason, since several other reasons can be alleged for which this silence

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may have occurred. For, besides the fact that...

[*Latin ed. p. 575*]

DOCTRINAL THESIS 575: It is admitted that these girls are ignorant regarding this right, since they were called only in the fourth place. It must be remembered that the pious Moronian Work has suffered many adverse circumstances, namely, a lack of debtors, the ineptitude of the executors, and in so many years, extraordinary subsidies have been expended, so that not only have all the annual fruits been diminished, but even the principal sum has been harmed. Regarding this matter, there is no doubt that the document in the very question before the Sacred Congregation of the Council in the year 1832 is clear, to which question the decision was applied that all subsidies should be withdrawn in order to preserve the pious work. Therefore, since all the fruits of the pious work have been exhausted, I do not see how girls called in the fourth place could claim any right.

Having presented these arguments for both sides, the following propositions are to be resolved.

Doubts:

I. Do girls of humble birth in the city have a right to obtain a subsidy from the [Moronian] Work in the absence of those called in the first, second, and third places? And, to the extent that the answer is affirmative,

II. How should the petitions of Adela be received in this case?

RESOLUTION: The Sacred Congregation of the Council, having knowledge of the cause, on February 27, 1875, decided as follows:

To I: It will be provided in the second [section].

To II: Negatively, and with the understanding that the petitioner should be commended to the charity of those present, even with a derogation, so that it may be the will of the Testatrix, having made a promise to the Most Holy.

FROM WHICH WE GATHER:

I. The will of the pious benefactor has the force of law, to be observed piously and religiously; and that no one, except the Supreme Pontiff, can derogate from it.

[*Latin ed. p. 576*]

576. SUBSIDIES granted to II. The Roman Pontiff, as Supreme Legislator, sometimes alters the will of testators; however, such alterations must, according to the Council of Trent, be made only for a just and necessary cause. III. The will of pious founders, if it appears less clear in some detail, can also be determined by a reasonable and long-standing prior application; or even by the dangers and inconveniences that would arise if the prior interpretation were abandoned. CONCERNING THE EXISTENCE

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OF THE CONFRATERNITY. On August 1, 1873, when we were arguing the case, folio 89, page 279, all the relevant folios were not presented to us, and we were completely unaware that the matter had been brought before the court again. For this reason, on page 285, in a note, we wrote that both Congregations of the Holy Council had confirmed [something]; which had been done on several occasions by the Apostolic See, even after the publication of the Bull of Clement VIII, in order to resolve controversies and disputes. And indeed, we spoke truthfully as far as history was concerned. However, in the present case, when the Brothers of the Congregation of Charity had been questioned by the Holy Congregation of the Council, as to what opinion should be held, they considered it appropriate to respond on August 25, 1874, with the words: "In the decisions and further: and it should be written to the Archbishop, that nothing has been taken away from the substance of the confirmed judgment by the additions made in the decision." That is to say: The Fathers [of the Council] rendered a judgment of law: the Society of Charity is to be recognized as a Confraternity; the Most Holy Annunciata is to be considered a Congregation, which cannot enjoy the rights of Confraternities, but only those privileges which have been sanctioned by the Bishop. See page 272.

[*Latin ed. p. 577*]

577. MARRIAGE. On May 22, 1875. The following case occurred. In the year 1869, on June 15th, the marriage of Francis, a wine merchant from the city of I, of the Diocese of E, and Anne B., from the city of M, was celebrated. The former was twenty-six years old, and the latter was twenty-four. Under an unfortunate, yet true, star, this marriage was contracted; for immediately afterward, various rumors spread concerning the mutual aversion of the spouses, the denial by the wife of her conjugal duties, and her mental disturbance. Concerning this matter, the husband complained to one person, then to another, about the unhappy marriage. Meanwhile, the parents, having been warned by the groom, observed their daughter as if she were insane, and undertook various pilgrimages with her to sacred places; from which journeys, the daughter was somewhat refreshed for a time, and, at her own request, was returned to the groom. However, as the illness again worsened, the woman was again brought back to her parents' home, and they sent her to a relative who was a surgeon, to be treated; but after two months, she was taken to a mental asylum. During this time, on May 16, 1870, Francis, the groom, made a petition to the Most Holy Father, requesting that the marriage he had contracted with Anne be declared null, or, if that were not possible, that he be granted a dispensation from the marriage, so that he might be able to contract new nuptials. Having received the petition, on September 19th of the year 1871, the Bishop was ordered to: 1. to prepare the procedural documents concerning both the valid and unconsummated marriage, and concerning the reasons for the

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dispensation; 2. to transmit these documents, once completed, to the Sacred Congregation.

[*Latin ed. p. 578*]

578. MARRIAGES. The Bishop took the greatest care to ensure that a process was established according to the procedures of the Benedictine Constitution. Hence, a defender for the marriage was chosen, and he took an oath, and then the spouses, the *seventh hand* [a legal term referring to a witness], and other witnesses were examined. The groom, under oath, testified as follows: 1. That, although he had been inclined towards another person, he nevertheless married Anne, persuaded by his parents. 2. That he married Anne not because he felt any love for her, but because he feared that, if he had not done so, he would have been severely punished by his father; and that, on the occasion of the betrothal, he had told the priest that he would freely enter into the marriage, because his father was present. 3. That he knew that she was in love with another man, and that she was inclined to marry him. 4. That, although he had often demanded the marital debt from his wife, she had always refused, saying: "I will never do that"; and that this had happened even though they had slept in the same room on the first night of their marriage, but in separate beds. 5. That he could prove, by oath and by a certain aversion that he began to feel towards her, that he had never had any carnal intercourse with his wife, because of certain impurities he had observed in her. The bride, having been examined and having taken an oath, and having been questioned, answered as follows: 1. Whether, in the six weeks prior to the marriage, she had suffered from melancholy, she replied: No, I was healthy in body and mind, until the matter of entering into marriage with Francis began to be discussed. 2. When asked whether what her husband had affirmed was true, namely, that on the very day of the marriage she had been completely silent, and had not answered any questions, and that afterwards she had often gotten up from the bed and said that she absolutely had to return to the city of M., because something bad had happened there, she replied: All of this is, as far as I remember, very true. 3. When asked whether, before the marriage with Francis, she had had any familiar relations with another man, and whether she had wanted to marry him, she replied: Yes; but there was not a very intimate relationship between us. 4. When asked whether, before the marriage, she had told her husband that she was averse to entering into the marriage, she replied: Very little.

[*Latin ed. p. 579*]

OF MARRIAGE 579. The words spoken before the marriage with my husband, I spoke, and nothing of that aversion did I reveal to him. However, he denied having said to the Parish Priest that he had given his consent to the marriage, because otherwise he would have been killed by his parents. 5.

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When questioned as to whether, on the day of the wedding and afterwards, she had persistently refused the conjugal debt, and whether the husband had repeatedly requested it, even though she refused, and whether he had used force in making such requests; whether she had spent the nights in the same room and bed with her husband, and for how long, and whether the marriage had been consummated, she replied: I always refused the debt, although my husband repeatedly, and even urgently, requested it, but without any force being used. We slept in the same room, but in separate beds, and that for almost two months. I refused the debt primarily because of my aversion to marriage and to my husband. When questioned about the condition of her body, she absolutely replied: I was and am a virgin, and I do not object to an examination of my body. When asked whether she felt any inclination towards her husband, and whether she would return to him to fulfill the duties of a wife, she replied: In no way can I return to my husband, towards whom I feel no inclination; indeed, I feel revulsion throughout my body whenever I think about such a return. She added that she felt no desire to enter into another marriage after this one was dissolved. The Parish Priest, who had blessed the marriage, testified: In the very act of consummation, Anna, with her head bowed, fixed her eyes sadly. I heard no response from her to the usual questions asked in that act, and only when I asked the third question did I see her nod her head slightly. However, I did not believe that she had freely given her consent. The Parish Priest further believed that reconciliation between the spouses would be impossible, and that the groom, if dispensation were denied, would convert to the Protestant sect in order to contract new marriages. The parents of both spouses and other witnesses testified as follows: first, about Anna's aversion to entering into marriage with Francis; second, about the consent given by her to the repeated and insistent urging of her parents; and third, about her silence.

[*Latin ed. p. 580*]

580. Concerning marriages after the giving of consent; then, regarding the bride's repugnance to the marriage itself, which she expressed before the Parish Priest, regarding her sadness during meals, regarding the absence of any special affection towards the bridegroom, regarding the denial of marital duties, regarding the good health of the daughter before the engagement with Francis, and regarding a certain mental alienation of the bride, both before and after the marriage contract; then, regarding the impossibility of reconciliation between the spouses; for each had attempted everything to bring about a reconciliation, but in vain. Valburga, a servant of the family of Anne, in addition to what has been reported, testified further: "The mother, as I myself saw and heard, not only urged her daughter with continuous persuasions to enter into this marriage, but also with all possible reproaches, indeed, even with blows, she pressed the resisting

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daughter. Nevertheless, the daughter said to me: 'I cannot enter into this marriage.' Finally, overcome, I believe, and forced, she yielded and ceased her resistance." It must also be noted that the witnesses of both parties appeared to be trustworthy, and that Francis and Anne were endowed with such piety, conscience, and good morals that they inspired complete confidence, and that they spoke in such a way that one would believe that they were telling the truth. When questioned, some witnesses testified that the spouses were very indifferent at the wedding feast, indeed, that they behaved coldly towards each other; others, however, said that they had observed nothing unusual in them, indeed, that they seemed joyful. After the examination of the spouses and the witnesses, three individuals were appointed by the Sacred Congregation of the Council in the year 1840 to assist in the investigation: an honest matron, and two experts in the art of medicine, in order to examine the body of Anne, and to report their findings. After the examination, all the signs of virginity were found, except for the hymen, which the sworn physicians declared could have been destroyed either by intercourse, even if only once, or by some other cause; Anne, however, legally questioned, stated under oath that the cause of this defect was different, other than intercourse, either with the bridegroom or with another. The process was transmitted to the Sacred Congregation of the Council, and the parties were instructed to appoint their respective advocates.

[*Latin ed. p. 581*]

MAHílMO. Nil 581, concerning a city defending its rights. When, however, it was reported to the Most Holy [See] concerning the poverty of the spouses, [the authorities] graciously granted [permission] that the matter be treated economically, with the opinion of a theologian and a canonist, and also with the observations of the defender of the marriage, by virtue of his office. And after a brief narration of the facts, these questions were posed to the theologian: 1. Whether the consent from the woman's side was truly given freely and without coercion. 2. Whether the marriage in this case still remains valid. 3. Finally, whether just and honest reasons are present in the matter so that consideration may be given to the Most Holy [See] for a dispensation from the marriage, which is valid but not consummated.

Regarding the first question, it was noted that the matter concerned a case of reverential fear. However, it was pointed out that not every reverential fear invalidates a marriage, but rather that which is accompanied by such things as can take away freedom. "It is not enough," says St. Alphonsus de Liguori in *Moral Theology*, book 1, treatise 6 on marriage, paragraph 1056, "to have pure reverence; but it must be accompanied by either blows, or threats, or the fear of some great evil, such as hatred, prolonged indignation, etc." It must also be noted that persistent and constant prayers,

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especially those that come from a person to whom reverence is due, can, just like force and fear, exclude freedom and render a marriage null. "Not every reverential fear," says Lessius in *De Justitia et Jure*, book 2, chapter 17, "is considered grave; but it is grave, or if threats are joined to it, or the fear of bad treatment, or persistent prayers, that is, vehement and frequently repeated; for when these are joined to that reverence which is due to a superior, they become equivalent to a grave fear." And such fear, even if it should be of a nature that it would be tolerable to a strong man accustomed to dangers, nevertheless, in a relative sense, it must be considered: for what would be light for a brave man accustomed to dangers, could be intolerable to another, and especially to a woman. For this reason, the Sacred Rota, in the case of Ludovisi, decree 326, paragraph 1.

[*Latin ed. p. 582*]

582. Concerning marriages, the law wisely decrees: "A prudent judge is not merely bound to examine the quality of the fear, and whether it is grave or slight, and whether threats and violence are present or absent; but rather, he must more and more consider the circumstances and the condition of both parties, whether the one is the one giving, or the one receiving, if the son is of a gentle disposition, timid, and endowed with honest and excellent morals, truly subject to the will of his parents, and if he has feigned fear in order to enter into marriage; then the judge must declare such a marriage null and void, even if threats and violence have not intervened."

Indeed, the theologian easily demonstrated that a grave fear intervened in our marriage, through the antecedent, concomitant, and subsequent circumstances. As for the antecedent circumstances, there is no doubt, from the testimony of trustworthy witnesses, and of the parents themselves, Anna, that is, *Anne*, abhorred these nuptials: "My daughter," said the father, "did not want to hear anything about the matter of the betrothal, nor did she want to enter into any marriage whatsoever." The mother said: "My daughter was horrified by these nuptials." What *Anne* herself said about her aversion to entering into marriage with *Francis* is mentioned above. However, it is clearly evident that she yielded solely to the persistent and importunate prayers and exhortations of her parents, which were not at all separated from threats and punishments, as these very things were testified to by the parents themselves and by the witnesses. And from this, it is clear that the appointed surgeon said that all of *Anne*'s misfortunes stemmed from this coercion: "And concerning the causes of *Anne*'s current state (of dementia), I will frankly say this." She had previously loved another young man, and indeed, with all the honesty that is possible for a young woman, and therefore she was averse to entering into marriage with *Francis*. Accustomed as she was to never contradict the will of her parents, she yielded, and thus, with a marriage entered into in this way, previously nullified, the marriage with *Francis* was concluded. Through

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all of this, *Anne* was greatly disturbed and, as it were, remained stunned.

[*Latin ed. p. 583*]

MATRIMONII 583: "The consequence was that her purification after menstruation ceased, and therefore, the marriage could proceed, and so on. Therefore, fear and force were employed to bring about this marriage; consequently, the free consent required for a valid marriage was absent. Indeed, the force exerted upon Anne is particularly evident from the testimony of her maid, Valburga; therefore, some might say that her testimony should not be given credence. But this is false; firstly, because the law holds that, in matters concerning the domestic sphere, there is no legitimate exception; the law states that, unless they suffer from any defect, domestic servants are considered to be witnesses of greater authority in matrimonial causes, even when it is a question of an invalid marriage, because they are presumed to be better informed (1); secondly, although Valburga was a servant in the household of Anne at the time the fear was instilled, she was not so at the time of the examination; and, for the purpose of legally enabling a witness, the time of the event must be considered; therefore, Farinacci, in *De testibus*, question 62, number 298, states: 'One should not be excluded from testifying concerning a former master, and much less concerning his daughter'; thirdly, Valburga's testimony is so firmly supported, and indeed, confirmed by so many other testimonies, that nothing more is needed to establish its truth. Therefore, in our marriage, there was fear and force present beforehand, and consequently, free consent was absent. Furthermore, the acts accompanying the coercion in this marriage clearly demonstrate this. Indeed, from the testimony of all the witnesses, it is clear that Anne, when leaving her home to go to the Church, was so afflicted with anxiety, sadness, and distress, that one would say she was going to a funeral rather than to a wedding. 'When my daughter,' says the mother, 'left the house to go to the Church and proceed to the marriage, she appeared anxious and distressed.' And the father: 'On the very day of the wedding, I noticed that my daughter seemed reluctant as she approached the altar.' Finally, Paro..."

(1) Indeed, when it is a question of an invalid marriage caused by fear instilled in the bride or groom within the domestic walls, witnesses of greater authority are required, but those who would otherwise not be admitted may be admitted. Alexand. cons. 156, n. 15. Gregor. Decis. 351, n. 7. Halianc. decis. 112, n. 4.

[*Latin ed. p. 584*]

584 MARRIAGES: In this very act, as Anne lowered her head, her eyes fixed with sadness. I heard no response from her to the usual questions asked during the act, and only when the third question was posed did I see her nod her head slightly (1). Furthermore, the subsequent actions

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of the bride clearly demonstrate her great fear. Indeed, scarcely had the marriage begun when the woman was so terrified of her husband that she even turned away from his gaze. "I noticed," said one of the witnesses, "that Anne immediately fled from her husband after the wedding." Another testified: "I was present at the wedding feast, and I saw the bride completely withdrawn and secluded. When the newly married man approached her and said, 'Now you are mine,' she turned her face away from him with great displeasure and sadness; and others confirm this." Despite these signs of distress and sorrow, Anne's apparent consent seems to be indicated. However, in a recent case, the Rota Decis. 405, n. 8, part. 18, Tom. 2, concluded in a similar situation: "When, having arrived at the act of contracting marriage before the Parish Priest, she was asked by him whether she wished to consent to it, she appeared so pale and deformed due to excessive sadness and fear that it could not be said that Margaret had, by her own will, consented to the marriage, but rather that she had consented to it out of obligation rather than free will. Therefore, it is not considered to have fulfilled the legal requirement that marriages must be free from coercion and depend on the will of neither party, and consequently, such a marriage remains invalid and null." However, the theologian does not fail to note those things that seem to cast doubt on Anne's actual consent. The Parish Priest's testimony is as stated above; but he raises doubts about Anne's father's nod, stating: "It seemed to me that..." The father of the bride contradicts both, stating that he did not refer to a nod of the head, but to certain inarticulate words, although he did not understand them. However, he adds that he did not hear what she said, since everything was spoken in a subdued voice. But the father of the bride refuted these words, spoken in a subdued voice, saying: "It seemed to me so singular that, after my daughter spoke, she did not even utter a word indicating consent." However, the Council of Trent, Session 21, chapter 1, on the reform of marriages, requires two or three witnesses, in addition to the Parish Priest, for the validity of the marriage, who, together with the Parish Priest, must perceive the mutual consent of the contracting parties, under penalty of nullity. The witnesses must see and hear clearly what they are testifying about; otherwise, they are not considered, according to the accepted opinion, as stated by Barbos, in chapter "Tuae Fraternitati," n. 2, at the end, concerning betrothals. It is clear that the father of the bride did not give a firm, but rather a hesitant, testimony regarding the sign given by the woman; but the canons exclude doubt in witnesses, and require a positive testimony. Therefore, since the witnesses are not uniform, and given that the father of the bride's testimony was somewhat ambiguous, only one witness would have been sufficient to invalidate our marriage; but the Council of Trent declares invalid and null those marriages that are contracted before the Parish Priest and only one

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witness, however worthy, and with no greater exception.

[*Latin ed. p. 585*]

The marriage dispute, even though it occurred within the same house, with separate chambers, saw the wife deny her conjugal duties to her husband, primarily due to her aversion to marriage and to the husband himself, as the woman testified in plain terms. This aversion never ceased, but remained constant, and could not be removed or even lessened by any means or distractions; indeed, she was eventually considered to be insane, and even though she returned to her husband once, she never performed her marital duties with him, always rejecting his companionship, always remaining sad and taciturn, so that she was finally forced to leave him, never to return. Therefore, in our marriage, there are added factors, both preceding, concurrent, and subsequent, which all clearly demonstrate the absence of consent from each party.

II. That our marriage still remains valid is easily demonstrated by: 1. the oath of the spouses themselves, who, without any hesitation, asserted that there was never any consummation of the marriage between them; 2. the testimonies of witnesses of unimpeachable character, who, under oath, affirmed that they firmly believed that the spouses had given truthful testimony in their oaths when they stated that the marriage had never been consummated; 3. the testimonies of trustworthy witnesses who heard this both from the husband and from the wife; 4. the public reputation, and indeed, the most steadfast reputation, which prevailed immediately after the beginning of the marriage, and which spread among the parents of both spouses, among the servants and family members, and among the citizens of City I and Oppido; 5. the legal medical examination, from which it was determined that all other signs of virginity were present in the woman, except for the hymen; indeed, the absence of the hymen is not, among other things, an argument for the absence of carnal intercourse, as Barzellotti, in his medical and legal writings, book 1, section 28, states. Given similar examples and others that medical history provides, if one were to decide on virginity based on the presence of the hymen, we would often find ourselves asserting that some are virgins even though they are corrupted, and others are corrupted even though they are virgins and chaste (1).

(1) That is to say: "Given the presented examples, and others that could be obtained from medical history, if we were to judge the existence of virginity based on the existence of the hymen, we would be compelled to judge that some are virgins who have been corrupted, and conversely."

[*Latin ed. p. 586*]

586. Regarding marriages: Henceforth, professors legally inducted [into the priesthood] have testified that the hymen can be broken for a reason other than through carnal intercourse; Anne, however, indicated the rea-

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son for the loss of her hymen. Titus. The reasons for seeking dispensation for a marriage, whether consummated or not, are reduced by the theologian to the following: 1. Due to a defect of the mind, or to fear in the woman, either before or at the time of the marriage. 2. Due to excessive aversion between the spouses. 3. Due to the greatest and indeed certain danger that would threaten the unfortunate woman, of relapsing into madness, if she were compelled against her will to return to the man, as is held by the doctors and surgeons presented as witnesses. 4. Due to the difference in the eternal salvation of the spouses, of which the respective pastors have testified. From these, the theologian judges that it is clear that a dispensation from the marriage should be granted. The Opinion of the Canonist. After carefully considering the preceding account of the facts, the Canonist responded to the first point of the question, stating that there are no circumstances present that would suggest that the question of the nullity of the marriage could be properly addressed under the heading of fear. He says that, among Canonists, fear arising from reverence for parents does not, in itself, invalidate a marriage; and it constitutes an impediment only when reverence is joined with continuous reproaches, vexations, harsh and insistent persuasions of a stern parent, to which resistance is not customary, all of which would constitute the appearance of a serious, unjustly imposed external fear; in our case, however, this fear is not of that kind, at least it does not appear to be, firstly because there is one witness present (Valburga) regarding the things that were said, and secondly because she does not affirm that Anne suffered annoyances and reproaches until the day of the marriage celebration, but rather that they seemed to continue as long as she did not consent to entering into marriage in the future; thirdly, because the other witnesses are only hearsay, and they report generically of the strict manner in which the parents acted towards their daughter; fourthly, because...

[*Latin ed. p. 587*]

MATRIMONII 587, quia patres putant se coactus fuisse; tum quia parochus credit, quod Anna libere consentisse; tum quia ipsa Anna, interrogata: num ideo a parentibus tuis mutationes fiebant, respondit: negative, quae omnia, utique, concludit, exprimere animum Annae a matrimonio cum Francisco alienum, non autem voluntatem et libertatem eius excludere. Circa secundum quaestionis caput, adnotavit Canonista exclusionem consummationis matrimonii duplici probatione, scilicet morali et physica; admisit vero probationem moralem 1. quia explorata erat et certa voluntas aversa Annae a contrahendis nuptiis cum Xaverio, ex indiciis antecedentibus, concomitantibus et consequentibus, ex sua (1), sponsi, parentum, et testium depositionibus. Hanc autem animi aversionem magna et vehementer gignere praesumptionem de non secuta matrimonii consummatione. Quousque enim a mulieris amore erga virum

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suum exulat, et potius dominatur cordis moestitia atque animi alienatio, supponi nequit positio actus, qui amoris expressio reputatur. Non eodem tamen pacto admisit Canonista probationem physicam, quae ex praxi Ecclesiae et positivo iure prae oculis maxime est habenda; nam ex concordi confessione obstetrices adnotarunt defectum hymenis, simulque existere vel unam vel etiam binas parvas carunculas. Ex eiusmodi relatione, chirurgus et medicus deputati possibilitatem coitus saltem semel, vel raro admodum habiti non excludunt. Ex quibus concludit Canonista, physicam probationem virginitatis Annae disparare; nam carunculae quae supersunt non sunt aliud quam residua hymenis contracta, quae demonstrant, hymen extitisse, et a causa physica fuisse laceratum; hypothesim vero medicorum de coitu saltem semel habito (1). Licet sola depositio iurata coniugum in questione matrimonii contracti non sit valde attendenda; cap. Super eo 5. De eo qui cognovit; tamen quando agitur de non consummatione inatrimonii, haec eadem depositio testimonio septima manus propinquorum roborata, maxime facienda est. Cap. V. de Frigidis et maleficiatis, ubi haec leguntur: Si autem, quod numquam se invicem cognoverint ambo (coniuges) fateantur, cum septima manu propinquorum ac vicinorum bonae famae (si propinqui deuerint) tacta, Sacrosanctis Evangelii uterque iureiurando dicat, quod numquam, per carnis copulam una caro effecti fuissent, et tunc videtur quod mulier maleat ad secundas nuptias convolare.

[*Latin ed. p. 588*]

588 Marriages are not devoid of their foundation; indeed, the entire reason for Anne's denial of her marital duty rests, according to the testimonies, on her habitual aversion of mind towards her husband, and on a certain confusion, or a certain infirmity of mind. However, at least one point in time is indicated in the records, in which it can be supposed that these two things were at least suspended. Indeed, Francisca, the mother of Anne, speaks as follows: "Soon after the daughter's arrival in the city I., news was received about the daughter's increased confusion, about her inability to manage affairs and to live with others, etc. We then brought her back home, we arranged pilgrimages to holy places, and as her condition improved, we brought her again, as she herself desired, back to the city I. (that is, to her husband)." From these words, it can be inferred that Anne, at least once, desired to be with her husband. Therefore, it is certainly not certain that the marriage was not consummated in this case (1).

3. The Canonist states that prayers should be offered to the Supreme Pontiff for a dispensation concerning a marriage that is valid but not consummated, since it must be established, both by law and by the constant practice of the Holy Congregation, that the marriage has not been consummated, before proceeding to define the matter of the dispensation. Given that the Holy Congregation has judged that the marriage was not consum-

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mated, the Canonist affirmed that there are several reasons for granting a dispensation, which he lists as follows: 1° in excessive aversion of mind between the spouses, so that reconciliation cannot be foreseen with a happy outcome; 2° in the verification that it is not certain that the consent of either spouse was fully free; 3° in the danger of scandal and fornication; 4° in the danger to the body, that is, in the fear of losing the good health of either spouse. One or another of these reasons would be sufficient to obtain a dispensation, much more so when they are all joined together.

NOTES OF THE DEFENDER OF THE MARRIAGE *EX OFFICIO*.

1. For the sake of his office, the Defender of the Marriage adduces the existence of a reverential fear and any kind of (1) This argument also requires proof. From it, it is inferred that Anne's aversion to her husband was not constant.

[*Latin ed. p. 589*]

Since they were from different families. Indeed, it is clearly evident from the records that both sets of parents requested the Holy See to grant a dispensation, either to annul the marriage or, failing that, to proceed with it only in a non-consummated state. Furthermore, the bridegroom and the parents of Anne met with each other, agreeing that each would contribute half of the expenses necessary to obtain the dispensation, in order that the marriage, as far as the bond was concerned, might be considered valid. Therefore, the father of Anne, and the bridegroom himself, considered the marriage to be valid in regard to the bond; thus, there was no coercion, nor any grave fear, which would have constituted a dissolving impediment, and they implicitly affirmed this. And this was also explicitly affirmed by the bride's father: for when questioned about the matter legally, he responded: "I repeatedly urged my daughter to marry Francis; I never used insults or threats, and in no case did she refuse the marriage." From this, I conclude that my daughter freely gave her consent to this marriage. The mother testified in the same manner; indeed, she also responded to a pertinent question: "I certainly urged my daughter to enter into this marriage; but I never used insults or threats; therefore, I believe that she freely consented." However, the defender argues that the testimony of the maid, Walburga, and that of the bridegroom, who affirmed that Anne had told him that she would be beaten by her father if she did not consent to the marriage, should be considered. Since the parents themselves completely denied this under oath, it is clearly false that the maid and the bridegroom testified to this. Furthermore, the process records show that Anne, when formally questioned about these matters, answered negatively to everything. In addition to the foregoing reasons, it must be added that the state of melancholy and mental disturbance of Anne has no connection with

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the proposed marriage to Francis Xavier, but rather with irregularities in her menstruation. Indeed, when the doctor was formally questioned about the cause of Anne's disturbance, he responded: "Since I have observed that Anne's menstruation was previously very regular and abundant, I suspect..."

[*Latin ed. p. 590*]

590. I began to investigate the cause of the interrupted menstruation in the case of Anne, suspecting that it might be related to her pregnancy. After a careful examination, I was convinced that extraordinary affections in Anne had disturbed her physical state, and that her mental disturbance stemmed solely from the anomaly in her menstruation. Furthermore, since it is certain that this anomaly in her menstruation, and therefore the aforementioned melancholy of Anne, began long before her marriage was properly initiated, it is not surprising that she was afflicted with the same illness both before and after her marriage to Francis. It may even be considered that she either contracted the illness from this very circumstance, or that she lost her freedom in giving her consent.

Subsequently, despite Anne's condition, both sets of parents considered her suitable to proceed with the aforementioned marriage. However, a false opinion had taken root among the common people, that she was unfit for managing a business of wine, a reason for which the marriage was contracted, but rather due to an unusual way of living. Thus, one of the witnesses testified: "On the very wedding day, I observed nothing unusual in the bride and groom. However, after two days, when both had begun to reside in their home in our city, almost at the same time, a fear and anxiety arose in the wife, which neither I nor any other present could ignore, and which, at that time, seemed to stem from her unusual living conditions. The same was said by all the guests in the house of Francis."

And Anne herself confessed this to the sister of Francis, saying that she could not remain in that house, that everything there was detrimental to her condition; that she was not suited to such a society of people. Therefore, it was not the marriage that led to Anne's mental disturbance; rather, it was the natural fear exacerbated by that unusual way of living in the house of her husband. For this reason, it must be said that she did not give her consent out of fear, or out of obedience to her parents, or through threats or coercion, but out of her own free will.

Moreover, did not the husband himself, from Le Conquet, declare that his wife was incapable of managing affairs, and for that reason, he drove her out of the house? He says, "It is true that I ordered her to leave, because..."

[*Latin ed. p. 591*]

CHAPTER 591. Concerning a marriage that cannot be maintained. For

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this reason, if she had been capable of selling wine, she would not have been forced to leave the house; otherwise, he finds no other reasons to reject Anne, I say, no aversion of the soul, no disturbance of the mind, no denial of conjugal duties, nor anything else, since he complains only of the woman's inability to engage in business. Therefore, the Defender concludes, this marriage is null and void because of the reverential fear instilled in Anne by her parents, which is the same as declaring light to be present at high noon, and it also wrongly denies the fundamental principles of both laws. However, the Defender believes that the records clearly demonstrate that the marriage was consummated. For when it is established that a man, endowed with the power of coition, has slept once in the same room with his wife, the presumption of the law, and indeed the law itself, declares the consummation of the marriage; and this presumption cannot be overturned, nor do the spouses themselves, nor the parents, nor the testimony of third parties, assert this in unison, as the Doctors teach in Chapter "Super eo de eo qui cognov. consang. uxor. suae." "Regarding what you ask," they teach, "whether a married man who, before the marriage of his wife, who is his relative, knew her through carnal intercourse, is to be separated from his wife by the judgment of the Church, if both confess this and some part of the neighborhood proclaims it: We answer your Brotherhood that they cannot be separated based solely on their confession, or on the rumor of the neighborhood; because sometimes some people may wish to collude against the marriage, and would easily lie about incest if they believed that by the judgment of the Church, they would be absolved; but the testimony of the neighborhood is not so readily accepted as valid, because unless reasonable and trustworthy proofs are added, it could well invalidate a valid marriage." Therefore, the Defender argued, if the confession of such a couple, and the rumor of the neighborhood, or the assertion of a third party, cannot invalidate the marriage, because they might easily lie about incest if they believed they would be absolved by the judgment of the Church, much less can the confession and assertion, or the belief, of the couple and a third party declare this marriage to be unconsummated, unless reasonable and trustworthy proofs are presented.

[*Latin ed. p. 592*]

53. Let worthy proofs be added; for, having established beyond doubt the man's potency and cohabitation with his wife for two months in the same room, the law presumes, and rightly so, that the marriage has been consummated; this presumption of the law cannot be destroyed, except by the confession of the spouses, Xaverius and Anna, as well as by the testimony of a seventh witness, and by the addition of the aforementioned reasonable and trustworthy proofs. However, in this case, the Defender argued that no such reasonable and trustworthy proofs are present; for these proofs must entirely be derived from an examination of the body, or

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from some other undeniable argument. But since a careful examination of Anna's body revealed the absence of the hymen, and the doctors affirm that this could have occurred from intercourse, either rare or at least once, there are no trustworthy proofs that are required by the cited canon, apart from the oath of the spouses and the testimony of the seventh witness. Therefore, the examination of the body in no way destroyed that presumption of the law, that the marriage has been consummated. Furthermore, it must be added that Xaverius was concerned about his wife's inability to perform household duties, and not about her refusal of conjugal duties; for the mother of the groom testified that on the day following the marriage: "My son said nothing about his wife; after a few days, she added, 'I have tried everything to bring my daughter to her senses, but without success, etc. I heard nothing from my son about the refusal of conjugal duties.'" The mother of Anna also testified: "My daughter never revealed to me a more intimate and strict account of the refusal of conjugal duties, nor did I ever ask her about such a thing. This, however, seems incredible." Indeed, one witness, a relative of Franciscus himself, did not hesitate to affirm: "From all the circumstances of the case, and moreover, from words heard from the husband's mouth, I suspected, but I could not safely conclude, that the marriage had not been consummated." For this reason, there are absolutely no trustworthy proofs from which it can be clearly determined that the marriage was not consummated. (1) If such trustworthy arguments were lacking, even the testimony of the seventh witness would be insufficient.

[*Latin ed. p. 593*]

It has been stated that there were 595 marriages. After considering all these matters, the Holy Congregation of the Council, in its meetings on January 23rd of the preceding year, deemed it necessary to respond to the following questions: 1. Does the nullity of the marriage in this case exist? And to what extent? The answer was negative. 2. Should the Most Reverend [authority] be consulted regarding a dispensation for a marriage that is valid but not consummated in this case? The answer was: To the first question, affirmative. To the second question, provision is made in the first. However, since the Defender of the marriage had requested and obtained a new hearing, and in the meantime had presented other evidence with which he attempted to prove, or rather, to confirm that this marriage had not been contracted under fear and coercion, the case was again presented on May 22nd, and the response to the aforementioned questions was: "In decisis" (i.e., the matter has been decided).

FROM WHICH WE MAY CONCLUDE: 1. Pure reverential fear, by itself, does not invalidate a marriage; however, it does invalidate a marriage if it is joined with such circumstances that the freedom of the contracting parties is impaired. 2. However, in the external forum, conclusive proofs are required before a marriage can be declared invalid by the judgment of

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the Church.

[*Latin ed. p. 594*]

594. INTERPRETATIONIS RESCRIPTI, 27 Februarii 1875. Compendium facti. R. Canonicus Cathedralis Ecclesiae S., promotus ad Sedem Episcopalem H. anno 1872, sequentes preces obtulit Pontifici: « Attente considerans suas restrictissimas finanzas, et ob damna sustenta a calamitatibus temporum praesentium, rogat ut dignaretur concedere facultatem ut potuerit continuare frui reditibus canonicatus cui investitus est in Metropolitana S. » Et die 25 Februarii eiusdem anni, rescriptum consecutus est: « Sanctissimus, attentis peculiaribus circumstantiis, et speciali ex gratia in exemplum numquam afferenda, benigne annuit, ut Orator canonicalem praebendam, qua in Metropolitana S. fruitur, licite ac valide ad beneplacitum Sanctitatis Suae retinere, ac omnes Canonicus fructus percipere valeat, amissis tantum distributionibus inter praesentes: Constitutionibus, sanctionibus, Literis Apostolicis iam expeditis super provisione Ecclesiae H. et aliis, quibuscumque minime obstantibus. » Quaestio exorta est de interpretatione verborum « amissis tantum distributionibus inter praesentes », cum Capitulum contendebat etiam distributiones cotidianas amplecti locutionem « amissis distributionibus inter praesentes », ideoque illas non comprehendi in concessione Pontificia. Haec litis contestatio. Praestat, ut moris est, praecipua hinc inde argumenta referre. Disceptatio synoptica. Quibusdam praemissis de peculiari Capituli constitutione, statuerunt Canonici principium iuris vetustissimum, quod habet: dispositiones iuri communi contrarias aut iura tertii quaesita laedentes, ampliandas non esse sed re-

ARGUMENTA CAPITULI.

[*Latin ed. p. 595*]

INTERPRETATIONS OF THE DECREE 595 concerning the restriction. In the decree, concerning which the question arises, the word "distribution" is not used in reference to daily distributions, but only to fruits. However, the general term "fruits" does not include daily distributions: as stated by Benedict XIV in *De Synodo Dioeces*, book V, chapter 2, paragraph 5, and by Ferraris in *Tractatus de Distributionibus*, article 1, numbers 67, 81, and 82. This argument is further strengthened by the fact that the Pope ordered that distributions be made *in praesentibus* [in the presence of those entitled to them] and not *ab absentibus* [from those absent]. These, however, are not limited only to emoluments for funerals and other contingent and uncertain matters, but encompass all distributions that take place *in praesentibus*. Therefore, given that a true distinction is sometimes made between daily distributions and distributions made *in praesentibus* (which the chapter claims it has never seen), this distinction must be understood

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in a general sense, and as such, it must include even daily distributions among the species subject to it, because distributions are not made to those who are absent, and whatever their nature, they are always considered in relation to those present. Furthermore, they argued, the Pope did not grant the Bishop the right to collect all fruits, but only those that were not distributed *in praesentibus*. For from these two extremes, a legitimate consequence follows, that he cannot collect any distributions: not those made *in praesentibus*, because the Pope expressly excluded them; nor daily distributions, because they were not expressly included in the decree. This is confirmed by the particular nature of daily distributions, because in the decree of the Holy Council, daily distributions do not represent a part of the fruits to be distributed, but come from goods given as a gift to the chapter as a body, and not to individual canons: and under the express condition imposed by the donor, that only those who perform choral service should receive from them. Furthermore, the Pope did not mention these, because he was unaware of them, although it would have been necessary and almost integral to inform him. It is much less just to equate the Bishop who benefits from this decree, or the professors who are absent from the choir due to their teaching duties, or the clerics who are absent for study purposes. And this for two reasons. First, because it concerns a hateful matter.

[*Latin ed. p. 596*]

596 REGARDING THE INTERPRETATION OF THE SACRED SCRIPTURE, which does not admit of extension from case to case: Firstly, because professors and clerics engaged in studies are assisted by the common law arrangement for the receipt of all fruits; secondly, because those who are raised to the episcopacy, by the very law, lose their canonical benefices (Cap. Cum in cunctis de elect. §. Cum vero). Furthermore, it is worse to oppose the distribution of the revenues about which the question arises, since it is not made with respect to hours, but all are admitted to participate who have completed a thousand hours: therefore, the daily distributions of the greater fruits (grossi) appear to be. For (the Chapter responded) the greater fruits are described as "Distributions which are not made with respect to hours and days, but in capita [heads]; and which are divided annually, except for the minute division of service." Indeed, the daily distributions in the Chapter are not made per capita, but are granted only to those who have been present with the choir for a thousand hours per year; and furthermore, they are not subject to the minute division of service which only requires residence, but according to the division of service which requires participation in the choir, as Maschat states, lib. 3 tit. 40 q. 20. Moreover, they continued, it must not be admitted that a new Bishop, by virtue of an indult, is considered to be present in the choir: since the Pope, in rescripts in which he grants the faculty to receive daily distributions,

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usually includes the clause "as if he were personally present in the choir and engaged in divine offices." Therefore, since nothing of this kind is mentioned in such a rescript, it must be held that the Pope did not wish to grant this privilege by indult. Finally, it is based on a false premise that what is presented in opposition concerns the restriction of the praebenda to 98 florins; whereas, on the contrary, in recent years, before ascending to the episcopacy, Canon R. received four times this sum under the title of praebenda. Furthermore, a Bishop, by reason of having been renounced as a Canon by the Pope, loses the right to receive distributions, unless he participates in the canonical hours. Nor does absence only cause harm: since any absence entails the loss of distributions, and the right of any canon to distributions is not sought, but is hypothetical, that is, subordinate to the service of the choir.

[*Latin ed. p. 597*]

INTERPRETATION OF THE WRITTEN TEXT 597. THE ARGUMENTS OF THE BISHOP. R. His advocate was using the words of the bull of nomination for the episcopate of H., and he showed that in it, the Pontiff had stated "that, so that you may more suitably maintain your status according to the demands of ecclesiastical dignity," he wished to provide for "some form of subsidy" and to grant a special grace, "so that you may freely and lawfully use the Canonry and the Prebend of the Metropolitan Church of S., which you have recently obtained, and may enjoy the fruits, revenues, and proceeds thereof, in accordance with our will and the will of the Apostolic See." He explained that this written text was intended to be applied to the prayers of the Canon R., namely, in such a way that the demands and proprieties of ecclesiastical dignity would be better provided for. In general, and in particular, he argued that, first of all, the nature of the revenues of the Chapter of S. was being discussed, stating that the revenues in that Chapter were derived from four distinct administrations, and that all of them formed a mass for daily distributions. Furthermore, it pertained to the daily distributions the revenues of the accumulated fund, which the Canons wished to include among the canonical fruits; because these, like all others, are lost by those who do not stand for a thousand hours per year in the choir. Nor was it true that what the Canons said, that the patrimony formed from the aforementioned administrations, belonged to the entire College and not to the individual Canons; under this, the accumulated fund could not be understood. For the accumulated fund is to be considered equal to the other administrations. Furthermore, it was absurd to separate the Canons who were taken together from the entire Chapter. Finally, both in the Bull of Alexander VI and in the inheritance of C., the provisions concerned the individual Canons. Up to this point, regarding the nature of the revenues: in the written texts, however, two things must be observed, namely, the intention and purpose of the writer,

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and also the words of the text in a grammatical and legal sense. In this case, the intention and purpose can be deduced from the words of the bull, in which the Pontiff openly declared that he had kept the demands of ecclesiastical dignity before his eyes. However, after deducting the daily distributions, 82, or 340, libellae would remain, if the revenues of the accumulated fund were added to the prebend; whereas, on the contrary, if only the distributions were deducted...

[*Latin ed. p. 598*]

598 REGARDING THE INTERPRETATION OF THE DOCUMENT: It was concluded that, between the present parties, the annual fruit [i.e., income] would reach at least its minimum amount of 1300 livres. It was determined that, according to the meaning and intent of the document, the daily distributions to Bishop H. must also remain in full. Furthermore, it was noted that he was to be considered as part of the choir to which the Pontiff, in his aforementioned letters, had stated, "that you may retain the Canonry and the Prebend of the Metropolitan Church of S.," which he currently holds. With these words, he was dispensed from interest; therefore, all [members of the choir] must receive the fruits [i.e., income] that are granted to those who are dispensed. This can be deduced from the words of the document: "He may receive the Canonry and all Canonicals [i.e., benefits], losing only the distributions among the present [members]." For the Pontiff, by this very word, imposed only one limitation, namely, with regard to the distributions among the present members; because the exclusion of one thing implies the inclusion of another. It is useless to oppose the fruits of the Canonry to the distributions, since the daily distributions are not made under the name of the Canonry. "Maschat, Vol. 3, page 20, Florence edition, 1854." The fruits are twofold: annual, or "gross," and are simply called the fruits of the Prebend, or "prebendal"; and the daily distributions, or "present," sustenance, or "canonicals," which are given because of the presence in the choir. Reiffens, in lib. III Decret., Tit. IV, § IV, N. 166. "The daily distributions are those canonical fruits which are given to those who are canonically present in the choir." Indeed, the daily distributions are also represented under the simple name of fruits. Reiffens, loc. cit., N. 164. This is very well applied to the subject matter, because almost all of the income of the Canonry is comprised of daily distributions. "Fagnan, Lib. 3 Decret., de praebenda, Cap. quia in N. 29." From the received conclusion, whenever all the fruits of the Canonry consist only of distributions, and those distributions are held for the benefit of students or for some other reason, but not for the benefit of those who are present, and therefore they should receive something else in the absence of the fruits of the Prebend, then, in that case, the distributions themselves are enriched, as if they were

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divine.

[*Latin ed. p. 599*]

INTERPRETATIONIS RESCRIPTI 399 > essent. Textus etc... Huius autem determinationis duae sunt rationes: altera est quam reddit Glossa in dicto capite quia nisi privilegiati ad fructus percipiendos perciperent distributiones, cum ex canonicatu nulli alii reditus percipiantur, privilegium eis nihil prodesset contra textum in Cap. In his de pri vii. Altera est ratio magis ex iuris canonici propriis terminis desumpta, quia ubi omnes reditus canonicatus constant distributionibus, tunc tales distributiones habent rationem praebendae. Et revera distributiones Capituli S. naturam induere eorum fructuum qui grossi appellantur; siquidem quotidianae distributiones non partiuntur respectu horarum et dierum, sed inter eos qui servitium adimpleverunt mille horarum tantum: proindeque horae canonicae non habentur tamquam mensura, sed uti conditio retributionis. S. C. in Cotronen. Residuorum 3 Martii 1855. Canonicorum obiectionem de odiosa rescripti natura esse repellendam, quia in themate agitur de re favorabili: cum indultum a Pontifice Summo Episcopo H.M. concessum fuerit per specialem gratiam et motu proprio. Iam vero tralatitium esse in utroque iure quod beneficium Principis quam plenissime sit interpretandum L. ult. ff. de Constit. Princi p. Beneficium Imperatoris quod a divina scientia proficiscitur quam plenissime interpretari debemus Inn. III in Cap. Olim tit. de Verb. Signif. cum beneficia principum sint interpretanda largissime (1) Reiff. loc. cit. § . VII N. 210. >. Demum differentiam inter distributiones quotidianas et distributiones inter praesentes indicare Auctorem Latini Elem. Iur. Can. lib. 1 p. 3 tit. 12 §. 7. Et de primis disserere ipsum quod « sunt certae quaedam specierum vel pecuniae praebitiones » quas tantum lucrantur qui statutis horis canonicis intersunt; alteras vero describere « emolumenta quae percipiuntur occa(1) Reiffenstuel loco citato haec habet a Generatila loquendo Canonicus ab Ecclesia sua ex privilegio Summi Pontificis potest percipere distributiones quotidianas. Privilegium enim non residendi a Papa concessum, idem operatur ac si Canonicus vere resideret. Nam ad Romanum Pontificem pertinere plenariam Ecclesiarum, Dignitatum, Personatuum, aliorumque beneficiorum ecclesiasticorum dispositionem m »,

There are two reasons for this determination: the first is that given by the Glossa in the aforementioned chapter, because if those who are privileged to receive benefits did not receive distributions, and since no others receive any income from the canonry, the privilege would be of no benefit to them against the text in Chapter VII concerning priors. The second reason is derived more directly from the proper terms of canon law, because when all the revenues of a canonry consist of distributions, then those distributions have the purpose of providing a benefit. Indeed, the distributions of the Chapter take on the nature of those fruits which are called "gross,"

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provided that the daily distributions are not divided with respect to hours and days, but are given only to those who have fulfilled a service of a thousand hours; therefore, the canonical hours are not considered as a measure, but as a condition for receiving the benefit. The Sacred Congregation in Cotronen. Residuorum, March 3, 1855. The objection of the canons that the nature of the rescript is odious must be rejected, because the matter in question concerns a favorable thing: since the indulgence was granted by the Supreme Pontiff, His Holiness, by special grace and of his own accord. It is indeed a principle in both laws that a princely benefice must be interpreted most broadly L. ult. ff. de Constit. Princi p. The imperial benefice, which proceeds from divine mercy, must be interpreted most fully Inn. III in Cap. Olim tit. de Verb. Signif., since princely benefices are to be interpreted most broadly (1) Reiff. loc. cit. § . VII N. 210. >. Finally, the Author of the Latin Elements of Canon Law, book 1, page 3, title 12, §. 7, indicates the difference between daily distributions and distributions made to those present, and he discusses the former as "certain grants of goods or money" which are received only by those who are present at the prescribed canonical hours; while he describes the latter as "benefits which are received on occasion." (1) Reiffenstuel, in the aforementioned passage, states that, according to the General, a canon can receive daily distributions from his church by virtue of a privilege granted by the Supreme Pontiff. For the privilege granted by the Pope is not one of non-residence, but has the same effect as if the canon were truly residing. For it pertains to the Roman Pontiff to have full power over the churches, dignities, persons, and other ecclesiastical benefices.

[*Latin ed. p. 600*]

600 REGARDING THE INTERPRETATION OF THE WRITINGS: "Concerning the years of service of others and of other pious individuals, which must be divided among those only who are present to receive them, unless the testator has expressly stipulated that they be distributed to those who are legitimately absent." *Sacra Congregatio Consilii* in the matter of distributions and revenues, on December 20, 1873.

(1) Therefore, it is absurd to contend that there is no distinction between canonical and other distributions, or that the Pontiff has ignored the special nature of daily distributions which He Himself establishes. Finally, the Bishop argued, even in the hypothesis that the Pontiff had expressly excluded daily distributions, that in the case in question, where only 340 are received out of 1300, there is a well-established rule of law that where all the fruits of a canonry consist in distributions, or where the revenues of a prebend do not reach a third of the total distributions, two out of three parts of the distributions, or those pertaining to the prebend and distributions combined, bear the nature of fruits, and are therefore to be distributed even to those who are absent. *Card. Petra ad Constitutionem 9 Bonifacii VIII, n.

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20, 21*.

After these considerations, the purpose was to resolve the doubt: Whether and from what date the revenues of the prebend and the cumulative amount are due to the Bishop H., according to the Pontifical rescript of February 25, 1872, and whether daily distributions are also to be paid in this case.

RESOLUTION: The *Sacra Congregatio*, having knowledge of the case, responded on May 22, 1875: "Negatively to the first part, affirmatively to the second, from the date of presentation of the Rescript." This rescript was confirmed on July 24, 1875. For a new hearing was requested by the Canons, who repeated the usual formula of doubt: Whether one should adhere or depart from the decisions in the case. The *Sacra Congregatio* judged that it should respond: "Adhere to the decisions, and even more so."

(1) See *Fasciculum III, Volumen VIII, page 135*, where this case was carefully related.

[*Latin ed. p. 601*]

FROM THESE DECREES, ONE MAY GATHER THE FOLLOWING:

I. Distributions made among the present members must be entirely distinguished from daily distributions; and these latter must be reckoned among the canonical fruits.

II. When canonical fruits are granted by Indult, and daily distributions are granted, it is to be understood that these apply, unless expressly excepted.

III. A decree by which the Pope grants a benefice is to be interpreted with the fullest meaning.

IV. This is to be understood with greater force when the Pope declares that he acts *motu proprio* and through special grace.

[*Latin ed. p. 602*]

602 MISSES FOR THE PEOPLE. On April 24, 1875, the Bishop T. reported to the Sacred Congregation, stating: "A doubt has arisen concerning the application of Masses by Parishes" on those feasts which, in Germany, are suppressed, but which are to be celebrated in the choir. Since the Most Holy Pope Pius IX, in his Encyclical letter of May 3, 1858, decreed that when the Divine Office is transferred to a Sunday, only one Mass should be offered for the people, the question arises whether this concession applies also to these cases, in which, because of an occurring feast of greater dignity, some feast must be transferred to another weekday, for example, the Feast of the Invention of the Holy Cross occurring on the Feast of the Tunic, the Spear, and the Lance of the Lord. Considering these difficult times, and since it does not seem that, without a very serious reason, new

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burdens should be imposed on the Parishes, it is my opinion that the Sacred Congregation should declare that, in this case, a Mass should not be offered for the parishioners.

Furthermore, the Sacred Congregation, in order to remove all doubt, inquired whether the weekday to which the suppressed feast is transferred remains a weekday, or whether it is treated as a feast, or at least whether the usual functions and rites are performed in the Church on that day, as are customarily performed on both days of precept and on suppressed days; the Bishop replied: "On that weekday to which, in the aforementioned case, the suppressed feast is transferred, no functions or rites are performed as are customarily observed on days of precept; but only the Mass of the transferred feast is celebrated, and the Divine Office or the private Office is usually performed by the clergy, or in collegiate churches, in the choir without the solemnity of the feast."

[*Latin ed. p. 603*]

MASSES FOR THE PEOPLE 603. Having received this response, a reply was sent through summary prayers. Today, it is proposed. In order that the state of this question may become clearer, it is worthwhile to transcribe something from the Apostolic Letters of Pius VI, dated April 19, 1788, addressed to the Bishop of Breslau, concerning a further reduction of festivals in the Kingdom of Prussia: it is written therein, "Since the King of Prussia has indicated to Us that he desires, with great eagerness, that a day be designated for annual solemn prayers offered to God, in order to obtain blessings from the fields, and that this day should be the fourth day of the week, in the third week after Easter, we see no reason to prevent Our authority from being interposed with you, Venerable Brother. Therefore, We send to you, so that you may assign a day for the celebration of such solemn prayers each year, and so that you may instruct the parishes of your diocese, which are subject to the Kingdom of Prussia." The Bishop, out of reverence for the Holy See, immediately established this feast in his diocese, urging them to observe it religiously each year. When it became apparent that a new feast would be readily observed by all if the feast, which is held in great veneration and honor among them, were celebrated on that very day, he prudently decreed that the Commemoration of the Holy Tunic of Our Lord Jesus Christ, which is preserved in his cathedral church for the great edification of the people, should be celebrated annually on the fourth day of the week, in the third week after Easter. This feast, therefore, appears to be the cause of the present question, since in the year 1871 it fell on May 3rd, and therefore the Feast of the Finding of the Holy Cross of Our Lord Jesus Christ was transferred to the 11th of the same month, together with the obligation of celebrating Mass for the People according to the Roman-Trevés Directory of that year, in which it is stated: "May 11th, Feria 5 (to be applied, for the parish). Finding of the Holy Cross, double, 2nd class (it

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was 3rd class)." But this arrangement did not please the pastors; therefore, the Bishop wished to consult the Holy Congregation on this matter, not concealing from them that he desired the application of Mass to be...

[*Latin ed. p. 604*]

6*04. For the benefit of the people, measures must be taken so that the burdens imposed on the parish priests are not increased in these difficult times. Having stated this, certain things have been brought to light which are necessary. By divine precept, all those to whom the care of souls is entrusted must, on Sundays and feast days, even if they are abrogated, offer and apply the sacrifice of the Mass for the living and the dead of their parish, whether it be a solemn or a simple Mass; for they are bound to offer the sacrifice not according to the degree of solemnity, but according to the pastoral duty owed to their flock. Therefore, if a feast of greater rank or dignity causes a movable feast or a fixed feast to be transferred to another day, it is fitting and just that a Mass be offered for the people on the day the feast is transferred, so that the faithful are not deprived of the benefit of the sacrifice due to them. And indeed, this praiseworthy custom prevails in Treviris, as we have seen above. Nevertheless, if the celebration of a feast fixed for a certain day is prevented by another feast of greater rank or dignity, then if the feast is celebrated on its proper day, and only the Office and the Mass are transferred to another day, it follows that the Mass for the people must be celebrated on that very feast day, even if on that same day, because of the aforementioned feast of greater rank or dignity, another Mass for the people would otherwise be celebrated. This is because, as Scavini correctly observes in *Theologia Moralis*, vol. 1, treatise 2, dispute 1, chapter 7, question 4: "It is possible to satisfy [a precept] by a single act, if by that single act" everything is included, "as is prescribed by different laws." Thus, for example, "if a feast occurs on a Sunday, it is sufficient to attend the sacred service once." And indeed, Pope Pius IX, in his Encyclical *Amantissimi Redemptoris*, § 3, of May 3, 1858, seems to ratify this doctrine, saying: "When the divine Office is transferred together with the solemnity to a Sunday, only one Mass for the people is to be offered by the parish priests." And rightly so: for when the Office and the Mass are transferred together with the feast, the application of the Mass for the people takes place on the day of the transfer, that is, on the day to which it is transferred. But when only the Office and the Mass are transferred, the application of the Mass for the people takes place on the very feast day itself.

[*Latin ed. p. 605*]

With sixty-five impediments, and even if another day of precept occurs, it is sufficient, as we have already indicated, because a single act fulfills the double requirement. This principle is confirmed by the Holy Roman

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Church in an ordinance of the day of May 23, 1846, where a case is discussed that is somewhat similar to our case. It states that the clergy are not bound by the title alone to attend Mass repeatedly during the feasts, and therefore it decreed: "only on the proper day." Having briefly explained these things, the question arises as to what response such a question should receive. The Sacred Congregation of the Council, having knowledge of the matter, decided to respond on April 24. In the case in question, the parish priest is not bound, and this should be notified to the Bishop.

I. By reason of the divine precept and pastoral office, and not by reason of a suitable or abundant or meager offering, all pastors of souls are bound to offer and apply the Mass for the people on Sundays and feast days, even if they are abrogated.

II. If a feast day assigned to a certain day is prevented by another feast of greater rank or dignity, the parish priest is bound to apply the Mass for the people on the day to which the feast is transferred, with the office and Mass; but he is not bound to such application on the very feast day that is prevented, if only the office and Mass are transferred, and not the feast itself.

III. Nor does another day of precept obstruct the occurrence of the same feast day from which another Mass would be celebrated; since, by a single act, the double precept can be fulfilled; provided that, through such an act, everything is included that is prescribed by the various laws. Acta, Vol. VIII, page JCIV *8*.

[*Latin ed. p. 606*]

"FUNERAL OFFICE." May 22, 1875. Since the time of which no memory remains in the town of F., a church was erected, increased by the contributions of the faithful, and dedicated to the Blessed Virgin Mary of Loreto. In more recent times, this church was, for us, an oratory under the invocation of the Virgin Mary assumed into Heaven, and a hospice was built adjacent to it for the poor and sick of that town. In the church of Loreto (which is erected within the limits of the parish of St. Sebastian), there exists, as is believed, a canonically recognized sodality of the faithful. For many years, disputes and lawsuits have arisen between the parish priest of St. Sebastian and this sodality concerning certain rights. When the Ordinary did not see an end to these matters, and believed that a limit could be imposed upon them, in order to eliminate discord and scandal, he issued a decree during the time of the Visitation; but the effect that he desired was not achieved. However, the matter was brought before the Sacred Congregation, at the request of the sodality, on December 5, 1863, under the formula of a doubt: "Whether the sentence (of the Episcopal Curia) of April 28, 1862, should be declared invalid or confirmed in this case." And then a rescript was issued: "Given that evidence is presented on both sides, and that documents and the acts of the Holy Visitations pertaining to the matter are presented, and

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that particular doubts are raised concerning each of the questions." In accordance with the manner indicated by the Sacred Congregation, this was done, and the following specific doubts were proposed: "I. Whether and in what manner the sodality has the right to carry the Cross without a veil in this case. II. Whether and what exemption is due to the same sodality in funerals celebrated by the parish priest in this case. III. Whether and what exemption is due to the same sodality in processions celebrated by the parish priest. IV. A summary of the facts."

[*Latin ed. p. 607*]

OFFICIAL DOCUMENT KLm-BRfg 607: Regarding the matters concerning the Sodalitas, concerning exemption with regard to the preaching of the Word of God in case V, and what functions it can perform independently of the parish priest in that case. The following answers were given by the Sacred Congregation, dated June 25, 1864: "To 1. Affirmative. To II. Affirmative, for the deceased in the hospital; in other cases, the answer No. 20 of the Decrees Urban and Oriental of the Holy Roman Congregation, dated December 10, 1703, should be observed. To III. Affirmative with regard to customary processions, even around the exterior of the Church and the main square; in other cases, negative, unless permission from the *episcopus* is present. To IV. The same decree should be observed as in the answer to question XVIII. To V. Affirmative in all matters concerning non-parochial functions, according to the form of preaching, as stated in responses III and IV."

The parish priest and the members of the Sodalitas were informed of this decree; but after a decade, the members of the Sodalitas themselves again approached the Sacred Congregation, presenting a petition, requesting that the case be reopened concerning question II; because the parish priest interpreted the answer given to question II in a completely different way than the Sodalitas, and this was done to the detriment of the Sodalitas. For while the matter concerned the right of the Sodalitas regarding question II, it only dealt with the parochial exemption for funerals of the deceased in its own hospital, and not a single word was said about the funerals of the brothers of the aforementioned Sodalitas. Furthermore, they stated, that from the very beginning, and by immemorial custom, this Sodalitas had been endowed with the privilege of exemption. Since the aforementioned decree of 1703 contains agreements and immemorial customs, or at least customs that are centuries old, in order to preserve the rights of the possessors in their own rights; therefore, the Sodalitas never could have been subjected to the situation where the parish priest, interpreting it in the way he did, would execute the answer to question II, and it had always been prepared to appeal to the Sacred Congregation.

When the petition was presented to the Sacred Congregation, the response was: "Let the *episcopus* be informed and his opinion be sought."

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The Ordinary, as was fitting, responded, and the decree was immediately issued: "Let it be recorded."

[*Latin ed. p. 608*]

FUNERAL OFFICE: A synoptic discussion. THOSE MATTERS WHICH CAUSE THE PAROCHIAL VICAR ANXIETY. The parts, contending through elected speakers, have formulated doubts written at the bottom. Therefore, the Parochial Vicar, seeking to resolve the matter briefly, referred to the first formula of the doubt: "Does the exception of a res judicata apply in this case?" He attempted to demonstrate that the same question had been proposed, which was definitively decided by judgment in the year 1864. It was decided in that occasion that the Sodalitas is entitled to an exemption from the Parochial Vicar "for the deceased in the hospital." In other cases, the response no. 20 of the decree of the Sacred Congregation of Rites of the City and the World, of December 10, 1703, should be followed, which decree establishes that the funeral office "regarding bodies to be buried in churches or chapels of confraternities" pertains to the Parochial Vicar "when the deceased is a subject of the Parochial Vicar, within whose parish is the church or chapel." The Sodalitas, he stated, proposed the same question, but with a changed form of inquiry: "Does the funeral office over the bodies of confraters pertain to the Parochial Vicar of St. Sebastian, when that Parochial Vicar is a subject of the parish of the Church of St. Mary of Loreto and in the public chapel of the Blessed Virgin Mary Assumed into Heaven?" However, he argued, the rescript of the year 1864 became a res judicata after the lapse of a decade from the judgment, with no one challenging it, and therefore, there is no doubt. Although the defender did not deny that, at times, it is legitimately permissible to object even against a res judicata; but only in one of two cases, either if the law has been violated, or if new and serious evidence demonstrates that those who judged were deceived regarding the circumstances of the case. He demonstrated that none of these circumstances were present, and thus, a restoration to the previous state could not be requested, describing the reasons for which the Sodalitas requested the aforementioned extraordinary benefit, which were that in the year 1864, an agreement was not made.

[*Latin ed. p. 609*]

The duties of the *finqueros* were stipulated by a document; for this matter had not been settled by custom; for if these things had been explained, the Sacred Order would have judged differently. But, he asserted, the matter had been thoroughly examined in the first place, and that in the year 1864, no agreement had been reached: while the Advocate of the Sodalitas insisted that the question be debated, "Whether the agreement initiated in the year 1713 between the members and the Parish Priest of St.

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Sebastian should be observed," and in his argument, he placed the entire foundation of the case upon such an agreement. Furthermore, the Advocate declared that the matter had not been debated concerning custom or the decree of the City and the World, from which it is commanded that legitimate customs be observed. Indeed, the Advocate of the Sodalitas, from the summary of his defense, had shown that he had used all his efforts to defend such a custom, "there." Finally, the Advocate pointed out that this agreement had been faithfully observed for a period of one hundred and forty years, so that whenever disputes arose between the parties concerning the rights mentioned above, they had been settled according to the same agreement. But that the customs preserved by the decree of the City and the World had not been omitted, this same summary demonstrates "there." Especially since all those things which are established in the agreement already belonged to the Confraternity, either by law, or by an ancient custom, or by the privileges of the Pontiffs. However, the Holy Congregation of Rites, in the decrees of the City and the World of January 12th of the year 1703, in addition to resolving the doubts mentioned there, expressly favored confraternities which were established by custom, agreements, and conventions. Furthermore, the defender added another very important point: not only had the Sodalitas abundantly alleged both the custom and the agreement in the year 1864, but it had also requested and received a rescript from the Holy Congregation, namely, that the parish priest's jurisdiction was excepted only in the case of funerals of the deceased in the hospital. Thus, in the same summary, "regarding the second question raised by the defender of the Sodalitas, which concerns the conducting of funerals, based on custom and the agreement, in which it is held, etc."

[*Latin ed. p. 610*]

610. The funeral office pertains only to those funerals that concern deceased members of the confraternity within the hospital. Therefore, it asserts that those objections raised by the confraternity are entirely foreign to the truth, inasmuch as either they were not judged to apply to all in the year 1864, or they were not disputed by the confraternity. It did not abstain from the discussion because it wished to overlook or ignore anything, but because it recognized that, apart from one specific matter concerning the deceased in the hospital, all other points could not be upheld. Consequently, it concludes that there is no reason to grant any restitution to the previous state, especially since it is even more inappropriate now than before to offer a pretext for these disputes, in which the matter at hand is the encroachment of ecclesiastical authority by laypersons. Regarding the second formula of doubt, the defender, in matters concerning custom, transaction, papal privileges, and the diocesan synod, which have been repeatedly and thoroughly discussed, as is evident from the aforementioned summaries,

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stated that he did not foresee what arguments the confraternity would once again bring up in opposition. However, the speaker protested that the parish priest, out of a desire for concord, had accepted certain definitions from the year 1864; and if the matter were to be considered settled, and the agreement between the parties rescinded, he insisted that it should not be judged unfairly, and he requested that he, in turn, be allowed to vindicate the rights that the confraternity had negligently and imprudently violated.

THOSE POINTS WHICH ARE PRESENTED BY THE CONFRATERNITY. The speaker for the confraternity, referring primarily to the first doubt, and citing from the texts in laws 12, 13, and 14 of the Digest, concerning the exception of a matter already judged, summarized the extreme requirements that must be met in order for the exception of a matter already judged to be valid, and demonstrated that these requirements are lacking both in the subject matter of the request and in the validity of the reason for making the request. He maintained that the matter is not the same, because in the year 1864, before the Sacred Congregation, the matter discussed concerned the performance of funerals for the deceased in the hospital, while the present question concerns only the funeral office for confreres, which is to be performed within the confraternity's church. Furthermore, with regard to the reason for making the request, he pointed out, from the very document presented for the congregation on June 25, 1864, that...

[*Latin ed. p. 611*]

OFFICIAL FUNCTIONS 611: At that time, the Sodalitium claimed that, according to custom and an agreement of the year 1713, it had been granted the right to conduct funerals in the hospital for the deceased. However, it now asserted that an exemption from the parish priest in performing the funeral rites for its members in the Church of Saint Mary of Loreto belonged to it, not so much according to custom and agreement, but according to the privileges of the Holy Pontiffs, and according to the law of the ecclesiastical government in the Kingdom [N.]. From these points, it concluded that the alleged exception was no impediment to considering the recent petition of the Sodalitium.

Addressing the second doubt, it presented several indulgences granted by the Holy Pontiffs, from which it argued that the Sodalitium could independently conduct the funerals of its members in its own church, without the intervention of the parish priest. This right, it maintained, was confirmed by an unforgettable custom; then by constant and uninterrupted observance, which continued until the year 1869; and finally by an agreement concluded between the administrators of the Sodalitium and the parish priest of Saint Sebastian, stipulated on July 9, 1713. It contended that this agreement should be religiously observed, not only because it was stipulated in a public document, with the approval and even encouragement of

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the Bishop, but especially because peace, harmony, and Christian charity were necessary to be restored between the parties; in such cases, many things are usually admitted that would not otherwise be tolerated, as is taught after the text in Chapter 1, article 23, question 4, by Valerius, on transactions, number 24; by Alciat, in the Law on transactions, Code of Verbal Meanings; by the Rota in Rome, Legitimate Session of June 8, 1759, § 6, before Conillac; in Fermo, in the execution of the concordat of June 25, 1760, before Rinaldo and Emo Pacca, as rapporteurs in the case of Monti Alti, transaction of February 20, 1808, §.

And after warning that a transaction, by law, both Roman and pontifical, extinguishes any exception, especially if it has effect, and if subsequent observance has been added, it observed that the transaction of July 9, 1713, had received new strength from the warning of the Most Holy Congregation of Rites, and from the decree issued by Clement VIII; and it concluded that although the aforementioned transaction may not have been entirely valid, it nevertheless deserved to be confirmed by Apostolic approval, so that hatred, animosity, and...

[*Latin ed. p. 612*]

612 Should the funeral rites give rise to renewed animosities, and lest disputes and discord, already appeased, be stirred up again, reference should be made to what is suitably discussed in the aforementioned Act of Montalto, of February 20, 1808, §. Furthermore, the Orator observed that, in general, lay sodalities pertain only indirectly to public ecclesiastical law, and that the relationships of each sodality with others, or with ecclesiastical authority, must be regulated by the morals and customs of the place where the aforementioned sodality exists. Regarding the lay sodalities established in the Kingdom [of Naples], he noted that, according to what was established in the concordat between the Holy See and the civil authority of that kingdom, the external relations between the aforementioned sodalities and the parish priests had been defined by the joint intervention of ecclesiastical and royal authority. Hence, various times, royal decrees had been issued, in which the greatest possible freedom was granted to the dying and to their heirs to summon as many and which priests and religious as they wished to attend the funeral, with the proviso that the parish priest retained the right to bless the body in the deceased's home, and to follow it to the church for burial; however, he could not claim any right over the funeral office that takes place in the church of the sodality. He asserted that it had therefore been stipulated that each sodality should have its own ecclesiastical chaplain, from whom, independently of the parish priest, religious functions should be performed in their churches and oratories. From these circumstances, the custom arose that no right belongs to the parish priest over the funerals that take place in the churches of the confraternities, as is the case in the diocese of S., where many worthy men maintain this custom. From

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all of these points, the Orator argued that no right can belong to the parish priest over the funerals of confreres performed in the church of the sodality, and that even if, by hypothesis, a dispute arose concerning this matter, it should be resolved according to the procedure of the Supreme Sacred Congregation, as established in its resolution of June 25, 1864, in which we saw that it was established, except for the deceased in the hospital, that in all other cases the response no. X X, Decree of the Sacred Congregation of Urbis et Orbis of December 10, 1703, should be observed. Because, although that response is generally directed to the parish priest.

[*Latin ed. p. 613*]

OFFICIAL DUTIES 615. Concerning the funeral office performed over the bodies of members of Sodalities who are to be buried in parish churches, if the deceased is subject to a parish priest within whose jurisdiction the church is located, it was nevertheless declared and decreed, with the aforementioned decree, "provided that the conventions and agreements perhaps made in the establishment of the confraternities, agreements begun between the parties, and approved by the Holy See, as well as indulgences, synodal and provincial constitutions, and immemorial or at least centennial customs, remain valid," that it was affirmed without doubt that he could not obtain any assistance from such a response, since he was subject to indulgences granted by several Popes, to the convention of the year 1713, to an immemorial custom, and to the aforementioned decrees which, by virtue of a concordat, were enacted by royal authority; that he could not grant to that same parish priest any right over the funeral office of the confreres, which is performed in the church of Saint Mary of Loreto or in the adjacent chapel by the Sodality. These two points having been noted, the following questions were proposed for clarification:

I. Does the exception of *res judicata* apply in this case? And if so, in what manner?

II. Does the funeral office over the bodies of confreres who are subject to the parish priest of Saint Sebastian apply to that parish priest in the church of Saint Mary of Loreto, and in the public chapel of the Blessed Virgin Mary Assumed into Heaven, in this case?

RESOLUTION. The Holy Congregation, having knowledge of the matter, decided on May 22, 1875, to respond as follows:

To I. Affirmative, and furthermore.

To II. In accordance with the provision in the first.

FROM WHICH IT MAY BE GATHERED:

I. No one can be called to account from a definitive sentence that has been issued, unless within the time established by law; that is, before the definitive sentence becomes a matter judged. For, according to the rule of

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law, a matter judged is accepted as truth.

II. A definitive sentence regularly passes into a matter judged by law if, within ten days from its pronouncement...

[*Latin ed. p. 614*]

614. The functions of a judge cannot be appealed against by the party, and therefore, once exercised, they cannot be retracted, and any attempt to contradict them will not be heard (1). III. The final judgment passes into a res judicata, even if an appeal has been duly filed by the party; however, if the appeal is subsequently abandoned, it is considered void (2). IV. It is sometimes lawful to legitimately object to a res judicata; however, this should not be done lightly, nor without cause; but only in one of two cases: either if the law has been violated, or if new and serious evidence demonstrates that the judges were deceived regarding the circumstances of the case. To the Ordinary of Nanneten, and the Ordinary of Paderborn. E. E. P. P. Cardinals of the Sacred Congregation of the Council, from whose writings the following excerpt is taken, which pertains to the study of philosophy and theology. From a letter to the Ordinary of Nanneten, dated February 27, 1875. We would also gladly hear from esteemed Fathers who, in this place, adhere to the teachings of St. Thomas. For the doctrine of this most holy and most excellent master is not only sound, but is eminently suitable for cultivating the minds of students, and for detecting and refuting errors. And let us not fear that, as long as the clergy adheres to him, the tenets of the so-called "liberal Catholics" (a plague of no small consequence) (3) will be abandoned (1). It is expressly stated in chapter 15, concerning judgments and res judicata: "There, when after a space of ten days the judgment passes into the authority of a res judicata, he who, within that time, does not seek the aid of an appeal, denies himself the right to appeal, and is considered, by interpretation of the law, to have submitted to the judgment." (2). Likewise, it is expressly stated in the Authentic Code concerning the times and remedies for appeals: "Those who appeal are granted a year, within which they must pursue the litigation either against themselves or against the opposing party, or, if a just cause intervenes, another year will be granted; after which, if the litigation is not completed, the judgment remains valid, as if no appeal had been filed," adds the Glossa there, verse "Manet." (3). If this phrase seems too harsh, we implore the reader to remember that plagues are proper to the bodies to which they are unfortunately attached, and that they infect. And there is no pestilence more deplorable and more pernicious than that which cannot be prevented; for it is that which, stripped of its terrifying appearance, assumes the form of a lie. It is not permissible for anyone to doubt that the "liberal Catholic" presents a similar appearance. The fraud and wickedness of this are horri-

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fying.

[*Latin ed. p. 615*]

615. But the people, having been instructed by such a clergy, will perpetually preserve the ancestral faith and the integrity of morals. From the Letter of 1870, addressed to the Ordinary of Paderborn, dated June 4th. The Fathers of Lodi do not wish to depart without offering the efforts which you are accustomed to employ in forming the new clergy; and in this matter, they are certainly determined that you will imbue and adorn him with the same sanctity of doctrine, and the same solidity, and the same observance towards the Apostolic See of Peter, as you yourself, Most Reverend Lord, most readily provide, and that you will guide him towards a deeper understanding of philosophy and theology through the immortal works of the Divine Thomas, by which a correct path and reason are revealed for the highest contemplation, which the German people so delights in. The Sacred Congregation, whenever it has the opportunity in its responses to the Reports of Bishops concerning the state of the dioceses, to speak of the studies of seminaries, has for many years solemnly declared that the opinions of St. Thomas, from which the restoration of the sacred and human sciences depends, should be presented to the Bishops, and instilled with the most emphatic words. For your consideration, I offer you the letters addressed to the Bishop of Nanneten, dated February 27, 1875, and to the Bishop of Paderborn, dated June 4, 1870, concerning this matter. They are, while clothed in the appearance of rectitude, insidious; they lack all true virtue; under the guise of every kind of virtue, the rebellion of man against God and against man flourishes; thefts and plundering are called by new names; and every kind of wickedness occupies the minds of the ignorant, corrupting all, and becoming the worst of errors, freeing and liberating from errors.

[*Latin ed. p. 616*]

FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS CONCERNING FUNERAL RITES. May 28, 1875. Summary of the case. The Minor Conventuals of the city of C. are requesting that they receive one-half of the revenues from funeral rites against the Canons of the Collegiate Church. In the general assembly of the Sacred Congregation of Bishops and Regular Canons, on July 27, 1860, the following question was proposed: "Whether and in what manner the custom favorable to the Conventuals of C. should be maintained, so that they may receive one-half of the revenues from funeral rites in this case?" The response received was affirmative. Having established this in general, the question arose regarding the specific revenues in question, which are entirely particular to that place. Indeed, according to custom, the origin of which is unknown, three types of funerals are celebrated in the city of C.: solemn, double, and simple.

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The first is celebrated with singing in the Office and the Mass; the second with singing in the Mass and one Nocturn; the third with singing in the Mass alone. A certain and established amount of revenues corresponds to each type of celebration. However, in the recently approved statutes of the Brotherhood of the Most Holy Sacrament of that place, which was re-established a few years ago, it is stated: "The Brotherhood shall provide a funeral of the third class for its members; and the priests attached to the Brotherhood shall recite the Office for the deceased before the Mass, namely, the first Nocturn with singing; but it shall be free for the parents of a deceased member of the Brotherhood to request a double or even a solemn funeral." This is the origin of the present question. For in two funerals of members of the Brotherhood, the Conventuals were demanding one-half of all the revenues, not just the wax, which is proportional to a funeral of the second class, a point which the Chapter vigorously contested. WHAT THE PP. CONVENTUALS ASSERTED IN THEIR FAVOR.

[*Latin ed. p. 617*]

CONCERNING THE EXPENSES OF FUNERALS 617, they maintained that it was a settled matter, and that they had the right to receive half of the proceeds, whether in wax or in money: and they insisted on this point, arguing that the funerals celebrated for the brethren were truly double in their solemnity, since they included a place for the singing of one Nocturne and the Mass, which is proper for funerals of the second class. And this excess arose from the proceeds received by the Chapter, exceeding the amount of wax and money that the Chapter would have received if funerals of the second class had been celebrated. Indeed, they insisted that these expenses should be removed from the fraternity's accounts, as the fraternity's statutes indicated funerals for the brethren as being simple, in name only double, and sometimes even solemn.

BUT THE CHAPTER REPLIED: Firstly, the Chapter denied that the fraternity's statutes were established for the purpose of the Reverend Fathers Conventual losing a portion of the proceeds. The fraternity, by promising funerals of the third class for the brethren, had sought to attract, especially the poor, to request membership. It was permissible, but not obligatory, for the families of the brethren to supplement this, and to arrange for funerals that were double or even solemn, which also opens the way for promoting such funeral celebrations. The Chapter demonstrated that the funerals promised in the statutes did not exceed the third class, since the recitation of the Office and the singing of the First Nocturne are a special form of suffrage that the clergy, attached to the fraternity, spontaneously offer to the brethren. Nor could anyone prevent someone, moved by piety, from celebrating more solemn suffrages for a brother. Much less had any law, whether ecclesiastical or civil, prescribed a specific quantity of wax for each class of funeral: on the contrary, the Chapter had always religiously

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handed over to the Reverend Fathers Conventual half of the proceeds from the wax. And this was the only amount due to those Fathers from special agreements made two centuries ago between the Chapter and the Fathers, and consistently observed.

HAVING HEARD THESE POINTS, the Sacred Congregation, reforming the formula for requests, approved the proposal made by the defender of the minor Reverend Fathers Conventual, stating that "the funerals celebrated for the brethren should be borne by the fraternity's expenses and should be of the third class."

[*Latin ed. p. 618*]

6. Regarding the perception of the medium of the funeral rites by the Conventual Fathers concerning the deceased, in a specific case. RESOLUTION: The Holy Congregation, having knowledge of the matter, responded affirmatively on May 1, 1874. PROCEEDINGS OF THE CASE: The Conventual Fathers petitioned for a revision of the benefits granted, noting that, according to the most ancient custom in place in the locality of C., no funeral rites could be celebrated that would modify the three established classes. In fact, the funerals of the brethren were, in appearance, assigned to the second class, although they claimed not to exceed the third. They argued that the actual practice should be preferred over the written law, citing the well-known principle: "quod agitur praefert," meaning that what is actually done takes precedence. Furthermore, they pointed out that the Chapter was accustomed to collecting a higher tax for the funerals of the brethren than that of the third class, and that the chanting of the Office by the priests was not offered as an act of piety, since these priests were all subject to the Chapter; and thus, it was evident that it was not the priests, as such, but the Chapter that truly performed the funerals. Therefore, the question was posed: In the case of May 1874, should one depart from the resolution of that day? RESOLUTION: After considering all matters, the Holy Congregation deemed it appropriate to respond on May 28, 1875. In its decisions and further pronouncements. FROM THIS, ONE CAN GATHER THE FOLLOWING: I. Customs that have been established by agreement are to be maintained, and according to the custom, which provides an interpretation of the agreement, it should be accepted.

[*Latin ed. p. 619*]

FUNERAL EXPENSES, Canon 619, Section II. In the past, when, according to ancient custom, only wax was reckoned among the expenses due to the clergy, it was not permissible for them to demand a specific sum of money. Section III. Regarding funeral expenses, emoluments cannot be received from those offerings which a person or a pious society provides

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through their own works for the deceased.

[*Latin ed. p. 620*]

FROM THE SACRED CONGREGATION OF RITES. 3. RESPONSE OF THE CONGREGATION OF RITES TO THE BISHOP OF LUCERNA CONCERNING MISSES ON THE FEAST OF THE NATIVITY. The Most Reverend Monsignor Joseph M. Cotellessa, Bishop of Lucerna, petitioned the Sacred Congregation of Rites to declare whether a priest could celebrate only two Masses on the day of the Nativity of Our Lord Jesus Christ, provided that, while possessing the privilege of celebrating three Masses on that day, he wished to represent the Mystery of the eternal, temporal, and spiritual generation in the soul of the just. It does not seem to be indicated that, in the aforementioned feast, only two Masses should be celebrated. - The Sacred Congregation, having heard the report made by the undersigned Secretary, and having carefully and maturely considered the matter, has decided as follows: Affirmative, that is to say, that a priest can, at his discretion, celebrate only two Masses on the day of the Nativity of the Lord, and so it declared on June 19, 1875. - C. Ep. Ostien. et Velit. Card. Patrizi, Prefect of the Sacred Congregation. - In place of the seal. - Piae. Ralli, Secretary of the Sacred Congregation. - It agrees with the original, which is preserved in this Chapter's Archive. - Lucerna, July 2, 1875. - Joseph M., Bishop of Lucerna.

[*Latin ed. p. 621*]

62. TO THE VENERABLE BROTHERS MICHAEL ANGELO, ARCHBISHOP OF PALERMO, AND TO THE OTHER VENERABLE ARCHBISHOPS AND BISHOPS OF SICILY. Brothers, Greetings and Apostolic Benediction. We know how much we are loved by you, Venerable Brothers, how devoted you are to the Chair of Peter, how bravely you fight alongside us for the cause of the Church, and how diligently you strive to counter the evils that are constantly increasing; therefore, we could not but most warmly accept your services and those auspicious signs by which you labor with such constancy to achieve your goals. It has happened to us that your confidence is based on the very miracles by which Divine Providence has sustained and still sustains our weakness. For these miracles demonstrate that God is on our side, and they should undoubtedly encourage us and renew our hope of help, and of a certain and glorious victory. And indeed, if it is fitting for any wise person to use appropriate methods and reasons suited to the nature of the matter, it certainly will not be considered presumptuous to expect a wondrous outcome, when a certain series of miracles seems to have been laid out as a path leading to it. The Church, indeed, has often returned from battle, redeemed with a brighter halo, after a struggle that was the more perilous. But nothing is more dangerous in the present situation than the fact that fraud, treachery, calumniae,

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the apparatus of false science, offensive laws, and violence, all conspire together to destroy the Church; that the same attack, stirred up throughout the entire world, appears to be guided by the same mind and controlled by the same method; that impiety has become so brazen that it openly professes hatred of religion, and does not reject this truth or that, but utterly and openly attacks the very supernatural order itself, and even God. This, a hitherto unheard-of general subversion of all principles, and a universal conspiracy of so many hostile forces against the Church, is a spectacle of an attack that is quite unprecedented, as in Volume VIII, page JOV. iO.

[*Latin ed. p. 622*]

622 APOSTOLIC LETTERS exhibit, and seem to require, in an unusual and manifest way, the intervention of the Almighty. Whatever may happen, the certainty of the triumph of the Church and the evidence of heavenly favor ought to strengthen us, and to incite us to battle with eagerness. Therefore, we earnestly implore from God abundant graces and aids for you; and as a pledge of our hopes, and as a witness of our most profound benevolence to you all, venerable brothers, and to each of your dioceses, we impart the Apostolic Blessing. Given at Rome, near St. Peter, on the 5th of July, in the year 1875, in the thirtieth year of Our Pontificate. Pius PP. IX. LETTERS SENT BY POPE PIUS IX TO THE DIRECTORS OF THE CATHOLIC PUBLICATION ENTITLED "Il Credente." Most illustrious and most esteemed Lords. In the midst of such sharp persecution of the Church, and such an assault on the truth, and such an abundance of scandalous publications and their license, it has clearly befallen Our Most Holy Lord that there are not lacking those who, through Catholic publications, strive to dispel the darkness of errors, to enlighten the minds of the deceived people, to stir up religious sentiments, or to confirm them, to safeguard the integrity of morals, and to defend sacred rights. Therefore, We received with great pleasure the services of you, just as We received the merits of those who gave names to your publication. For just as those names testify to the obedience and devotion of those who, indeed outstanding, but with great effort and often ungratefully, dedicate themselves to the arduous task of defending the truth; so too, We perceived in the preference given to this gift, the purpose of such endeavors, and the natural piety of children who, grieving over the sorrows of a common parent, strive to alleviate his anxieties. For these reasons, We have ordered that Our gratitude be expressed to both of you, and We urge you to maintain with eagerness the struggle for justice that you have undertaken, so that it may not allow itself to be diverted from its purpose.

[*Latin ed. p. 623*]

623 FROM THE CONSISTORY ACTS: Concerning the Consistory held

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on September 17, 1875. The Most Holy Father, having conferred the order of the priesthood upon Cardinal Thomas Martirelli, granting him the title of Saint Prisca, and having removed the deaconship of Saint George in the Velabro, and having assigned him a place after Cardinal John Si mor, and having closed the session, according to custom, after the Most Reverend Cardinal John Mac-Closkey had been created publicly on March 15 of the current year; following this address, the Cardinals of the Holy Roman Church, created and reserved in pectore on March 15, 1875, were announced: FROM THE ORDER OF PRIESTS: Most Reverend Roger Aloysius, Most Reverend Antici Mattei, Most Reverend Salvatore Nobili-Vitelleschi, Most Reverend John Simeoni. Then, the Most Holy Father created and announced a Cardinal of the Holy Roman Church: The Reverend Archbishop of Rennes, Goffredo Brossais Saint Marc. FROM THE ORDER OF DEACONS: Most Reverend Lawrence Raudi, Most Reverend Bartholomew Pacca. Then, the same Holiness, Pope Pius IX, proposed the following churches: The Metropolitan Church of Valladolid for the Reverend Father Ferdinand Blanco y Lorenzo, transferred from Abla.

[*Latin ed. p. 624*]

624 We, having considered your application, choose and admit you, and we enroll you in the most distinguished of these groups. Therefore, so that you may bear the insignia of that Order, namely the golden torque, the sword, and the gilded spurs, and so that you may enjoy all and each of the privileges, prerogatives, and indulgences with which other Knights of the same Order enjoy, or may enjoy, or can and will enjoy, except for those faculties granted by the Council of Trent, confirmed by the authority of this See, we grant and concede these to you. Furthermore, we grant to you that you may freely and lawfully bear and display a golden, eight-sided cross, with a white surface depicting the image of Saint Sylvester, the Pope, in the center, attached to the chest by a silk ribbon distinguished by red and black colors, with red edges, affixed to the left side of your garment. In order that no difference may occur, either in the garment or in the cross that is worn, we command that a suitable design be delivered to you. — Given at Rome, near Saint Peter, under the Fisherman's ring, on the twenty-second day of June, in the year 1875, in the thirtieth year of Our Pontificate. — *[Space for seal]* F. CARD. ASQUINIUS.

[*Latin ed. p. 625*]

APOSTOLIC LETTERS 623, nor be moved by adversities. That this may be accomplished, with God's help, I impart to you all, as a witness to His paternal benevolence, the Apostolic Blessing. — And I, having been commanded to announce these things, gladly avail myself of the function of my office, so that I may exhibit to you testimonies of my obedience and highest

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esteem, by which I pray for all good and salutary things from God. — Yours, most illustrious and Reverend Lords. Rome, June 28, 1875. — Obediently, Franciscus Mercuriali, Servant of the Most Holy. To the most illustrious and Reverend Lords, the Editors of the periodical entitled "II Credente Cattolico," and to the beloved son, Edward Arborio Mella Corniti of Vercelli. Pope Pius IX. Beloved son, greetings and the Apostolic Blessing. — We consider worthy of being honored with the signs of Pontifical benevolence those who cultivate good arts and diligently apply them to the service of the sacred cause. However, when we learned from the venerable Father John, Bishop of Pinerolo, that you, through your virtue and piety, and through your devotion to the Holy See of Blessed Peter, have for many years, with singular virtue and diligence, and without any reward, rendered excellent service in restoring, embellishing, and constructing sacred buildings, renowned for your expertise in ancient architecture, we came to the decision to offer you a sign of honor, which may be a reward for your merits in the sacred cause, and a testimony of our most favorable disposition towards you. Therefore, wishing to honor you with a special distinction, and absolving you, for this reason alone, from any excommunication, interdict, or other ecclesiastical sentences, censures, and penalties, should you, perchance, incur any, and considering you absolved by our Apostolic authority through these Letters, we hereby appoint you a Knight of the Order of Saint Sylvester, with the golden insignia.

[*Latin ed. p. 626*]

626. In Consistorial Acts: The Metropolitan Church of Tarragona, for the Reverend Father Constantino Bonet, transferred from Gerunda. The Archiepiscopal Church of Saraia, in a land of infidels, for the Reverend Father Philip Manetti, transferred from the Church of Tripolitania, in a land of infidels. The Metropolitan Church of Bisuntine, for the Reverend Father Peter, Anthony, and Justus, not Paulines, transferred from Gratianopolis. The Metropolitan Church of Brindisi, with the perpetual administration of the Cathedral See of Ostrog, for the Reverend Father Maria Aguilar, of the Regular Clerics of Saint Paul, transferred from Ariano. The Archiepiscopal Church of Melitene, in a land of infidels, for the Most Reverend Felice M. De Neckere, a priest from the Diocese of Bruges, Domestic Prelate of the Most Holy Father, Apostolic Protonotary, Referendary of both Signatures, and Canon of the Basilica of the Lateran. The Cathedral Church of Majorca, for the Reverend Father Matthew Jaume y Garau, transferred from Minorca. The Cathedral Church of Cuzco, for the Reverend Father Peter Joseph Tardoya, transferred from the Church of Tiberiopolis, in a land of infidels. The Cathedral Church of Astorga, for the Reverend Father Mariano Bresmes y Arredondo, transferred from the Church of Gand. The Cathedral Church of Nueva Pamplona, for the Reverend Father Ignatius Anthony Parra, already a Bishop of PanamÃ¡. The Cathedral Church of Ariano, for the Reverend

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Father Salvatore M. John Nisio, of the Regular Clerics of Matris Dei, Apostolic Missionary, and Doctor of Sacred Theology. The Cathedral Church of Albae Regalis, for the Reverend Father Ferdinand Dulanszky, a priest, Canon of that Cathedral, Titular Abbot of Saint Giles, and Doctor of Sacred Theology. The Cathedral Church of Huesca, for the Reverend Father Honorius de Onaindia, Apostolic Protonotary, Archpriest of the Cathedral of Burgos, Administrator Oeconomus of that Archdiocese, Examiner Pro-Synodal, and Doctor of Sacred Theology. The Cathedral Church of Vich, for the Reverend Father Peter.

[*Latin ed. p. 627*]

FROM THE CONSISTORY ACTS:

Colomer y Mestres, a priest from Gerona, professor of philosophy and Sacred Theology at that Seminary, and Doctor of Sacred Theology, to the Cathedral Church of Minorca, in place of the Most Reverend Emmanuele Mercader y Arroyo, a priest from Barcelona, formerly a Secret Counselor to the Bishop of Pamplona, Canon of that Cathedral, and Doctor of Sacred Theology.

To the Cathedral Church of Cuenca, the Most Reverend Sebastiano Herrero y Espinosa de los Monteros, a priest from Gadit, Prefect of the Oratory of Saint Philip Neri, Rector of the Seminary of Gadit, Archpriest of that Cathedral, General Vicar of that same City and Diocese, and Doctor of both laws.

To the Cathedral Church of Segovia, the Most Reverend Emmanuele Gómez Salazar, a priest from Burgos, Rector of the Seminary of Valence, Canon of that Metropolitan Church, Doctor of Sacred Theology, and licentiate in Canon Law.

To the Cathedral Church of Ghent, the Reverend Father Vincentio Pontes y Cantalar, a priest from Madrid, parish priest of the Saints Charles and Dominic.

To the Cathedral Church of Panama, the Most Reverend Iosepho Telesphoro Paul e S. Fide de Bogota, a priest, professor, and member of the Society of Jesus, a missionary, and Doctor of Sacred Theology.

To the Cathedral Church of Loja, the Reverend Father Iosepho Mosia, a priest from Tarragona, a professed priest of the Order of the Friars Minor of Saint Francis, and Synodal Examiner.

To the Cathedral Church of Guamanga, or Ayacucho, the Most Reverend Ioanne Iosepho de Polo, a priest from Lima, Canon of that Metropolitan Church, and Doctor of Sacred Theology.

His Holiness Pope Pius IX, after having on the morning of September 23, dismissed the Cardinals Salvator Nobili, Vitelleschi, Laurentio Randi,

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and Bartholomaeo Pacca (who had been created on March 1 and publicly announced on September 17 of the current year), proposed the following appointments:

To the Archiepiscopal Church of Thebes, in the infidel part, the Most Reverend Aloisio Biscioni Amadori, already Bishop of Burgos of Saint Sepulchre.

(1) Emus Autici Mattei was absent due to illness.

[*Latin ed. p. 628*]

628 FROM THE CONSISTORY ACTS: The Cathedral Church of Gratiopolitan to the Reverend Father Amando Fava, transferred from the Church of Marfinica. The Cathedral Church of Burgos to the Reverend Father Instino Puletti, Archpriest and Cathedral Parochial Vicar of the Cathedral Church of Burgos, and Pro-Synodal Examiner. The Cathedral Church of Nîmes to the Reverend Nicholas, Francis, Aloysius Besson, a priest from the Diocese of Besançon, and canon of that Metropolitan Church. The Cathedral Church of Troyes to the Reverend Peter Mary Cortet, a priest from the Diocese of Nevers, Parochial Vicar and General Vicar of La Rochelle and Nevers. The Cathedral Church of Gerunda to the Reverend Isidore Valls y Pascual, a priest from the Diocese of Vich, Judge, Synodal Examiner, and Licentiate in both laws. The Cathedral Church of Piacenza to the Reverend Peter Casas y Souto, Canon Penitentiary and Doctor of Holy Theology. The Cathedral Church of Pamplona to the Reverend Joseph Oliver y Hurtado, Canon of the Metropolitan Church of Granada, General Vicar of that Archdiocese, and Doctor in both laws. The Cathedral Church of Burgos to the Reverend Joseph Orberà y Carrion, Canon of the Metropolitan Church of Saint James of Cuba, and there General Vicar and Capitular; the See being vacant, Doctor of Holy Theology, and Licentiate in both laws. The Cathedral Church of Saint Christopher of Havana to the Reverend Apollinar Serrano Diez, Canon of the Cathedral of Ávila, and Doctor in both laws. The Cathedral Church of Orense to the Reverend Caesareo Rodrigo, a priest of the Archdiocese of Burgos, and Doctor of Holy Theology. The Cathedral Church of Lérida to the Reverend Thomas Costa y Fornaguera, Canon of the Cathedral of Cádiz, and Doctor of Holy Theology. The Cathedral Church of Ávila to the Reverend Peter Joseph Sánchez Carrascosa y Carrion, Licentiate in both laws and Licentiate of Holy Theology.

[*Latin ed. p. 629*]

FROM THE ACTS OF THE CONSISTORY 629: The Cathedral Church of Sion for the Reverend Adrian Tardinier, as parish priest, titular canon, and external vicar. Furthermore, the Most Holy Father announced the following appointments, completed by a papal brief: The Metropolitan Church of Athens for the Reverend Father John Marangò, transferred from

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the churches of Micon and Tenos. The Metropolitan Church of Naxos for the Reverend Father Joseph Zaffino. The Cathedral Church of Laibach for the Reverend Father John Chrysostom Pogacar, pro-Synodal examiner and Doctor of Sacred Theology. The united Cathedral Churches of Micon and Tenos for the Reverend Father Ignatius Giustiniani. The Cathedral Church of Chios (Scio) for the Reverend Father Andrea Timoni. The Cathedral Church of Malles in the infidel territory for the Reverend Father Hermann Gleich, a presbyter of Wratislavia, canon of said Cathedral, and auxiliary deputy to the Bishop of Wratislavia. The Cathedral Church of Mylasa in the infidel territory for the Reverend Father Joseph Boltizar, canon of the Cathedral of Gran, General Vicar, and auxiliary deputy to the Most Eminent Cardinal Simon, Archbishop of Gran. The Episcopal Church of Gerasa in the infidel territory for the Reverend Father Ludovico Vey, appointed Apostolic Vicar of Eastern Siam. The Cathedral Church of Lyra in the infidel territory for the Reverend Father John Prendergast, appointed coadjutor to the Reverend Eugene O'Connell, Bishop of Vallispratensis. The Episcopal Church of Dansare in the infidel territory for the Reverend Father Joseph Bugliari. Finally, the Consistorial Advocate, who requested from the Most Holy Father the Sacred Pallium for the Metropolitan Churches of Valladolid, Tarragona, Vesontio, Brindisi, Athens, and Naxos, received this reply from the Most Holy Father: "We shall grant it shortly."

[*Latin ed. p. 630*]

630 FROM THE SACRED CONGREGATION OF THE COUNCIL OF MATRIMONY, May 22, 1875. Summary of the Case. Titius, being captivated by love for the girl Lucretia, used familiarity with her and her mother, often staying in their house, both day and night. Consequently, driven by a mad lust, he violated Lucretia and made her pregnant. However, in order to avert some scandal, a marriage was celebrated in the year 1851, having obtained a dispensation from three publications. After this marriage was consummated, Titius and Lucretia appeared to live securely until the year 1857; and in the meantime, they conceived children, who, however, were lost in infancy. Nevertheless, on December 17th of that aforementioned year, 1857, Lucretia presented a petition to her Diocesan Curia, in which she requested that her marriage be declared null, due to a hindering impediment of affinity arising from an illicit union in Airolo. She asserted that Titius had carnal knowledge of her mother before he was joined to her in marriage; and she affirmed that she had learned this from her mother, who, moved by the goads of conscience, revealed the whole matter. In the meantime, the Diocesan Curia did not omit anything to, in the end, with composed spirits, and after the judicial process was suspended, to have recourse to the Holy See, in order to obtain the dispensation for the asserted impediment; but since all attempts failed, then, through a formal judicial proceeding, with a marriage defender established, who was always

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summoned and present, the parties and witnesses were subjected to examination. First of all, the interrogation was addressed to Titius and his mother; who, under oath, testified that they had indeed and frequently had carnal knowledge of each other, and that the union...

[*Latin ed. p. 631*]

MARRIAGES! 631 were celebrated before Lucretia's marriage. Afterwards, more witnesses were questioned, both those who had seen and those who had heard; their testimonies, summarized, are preserved in the Curia. Therefore, after hearing the parties and the witnesses, the Ecclesiastical Judge of that Curia, in April of the year 1858, pronounced a sentence in which he declared that there was not sufficient proof of the impediment of affinity; however, the spouses were to be separated, both in terms of bed and in terms of habitation. But Titius appealed this sentence to the Metropolitan Curia. This appeal was also accepted by that Curia, and it constituted itself as a criminal tribunal, and conducted the case as if it were a criminal one, except for the defender of the marriage. In truth, the matter remained pending until the year 1866, when Titius himself, appealing to the Sacred Congregation, requested the dissolution of the marriage; and he also stated that he had recently conceived a child with another woman with whom he was living, and that he desired nothing more than to provide for the legitimacy of his conscience and of his offspring. Letters were then sent by the Sacred Congregation to the Bishop for information and a vote. The Ordinary communicated the content of these letters to the Archbishop to whom the appeal had been made; and on April 21, 1866, he sent all the acts of the case to the Sacred Congregation, in the state and terms in which they were. However, considering the appeal that had been interposed before that Curia, a decree was issued on June 4, 1866: "The appeal shall be maintained before the Archiepiscopal Curia, according to the form of law, and the party bringing the appeal shall be summoned." The purpose of this summons was to ensure that the Archbishop was informed of this decree and that he would pursue the case. Nevertheless, the matter remained suspended until the year 1871, when, after Titius had presented a document to the Sacred Congregation and had renewed his former requests, the Archbishop was asked why the judgment of the appeal had not been brought to a conclusion in accordance with the decree of 1866. The Archbishop replied that he had postponed the decision of the case, first because he had not received notification of that decree from his agent, and second because, due to the difficulties of the times, he considered it more appropriate for the Sacred Congregation to be called upon to handle this matter; he also stated that both Titius and

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Lucretia were currently associated with another person.

[*Latin ed. p. 632*]

652. Regarding the matter, after deliberation, a new course of action was considered. Truly, the documents pertaining to the case were submitted to him anew in February of the year 1872, and he was also commanded to diligently proceed with the judgment of this case. Desiring to fulfill this, the Archbishop urged both spouses, whether in person or through their representatives, to present their rights before the Archiepiscopal Court; and this he did, but Titus did so not without great difficulty, as Lucretia was perpetually reluctant. Therefore, on April 18, 1873, it was decreed that there was not sufficient proof of the impediment of affinity, and that the spouses should not be separated concerning the marriage bed and dwelling; and thus, the previous judgment was upheld in part, and in part was deemed to be revoked. But when Titus appealed this decision to the Sacred Congregation, a complete copy of the proceedings was transmitted. After a review of the case was made for the Most Holy Prince, the response was that it should be treated economically within the Sacred Congregation. Therefore, the opinions of theologians and canonists were requested; and we have deemed it useful to present the summary of their opinions together with the observations of the official defender.

SUMMARY OF OPINIONS:

Canonist: Receiving the letter from the Secretary of the Sacred Congregation with a willing spirit, the Canonist, wishing to express his opinion on the matter concerning which he was asked, began to state the status of the question as follows: "Therefore, it will be necessary to thoroughly investigate whether, in the present case, the impediment of affinity in the first degree of the direct line has been legally proven, and consequently whether the judgments rendered by the aforementioned Courts should be confirmed or overturned.

In the first place," he said, "it is necessary to know that the Council of Trent, Session 24, chapter 4 on marriage, declared marriages with the impediment of affinity contracted in the first or second degree to be invalid; so that those who have entered into such a marriage, even if they have dared to consummate it, are bound by no bond and should be completely separated concerning the marriage bed, concerning the dwelling, and concerning the bond itself. However, if this is certain in law, then..."

[*Latin ed. p. 633*]

MATRIMONII 6*33. Indeed, the right arises from the fact itself; therefore, it must remain for the spouses to prove that their marriage has not been declared null by the Church, because, in fact, a juridical impediment ex-

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isted before the marriage. Every impediment that removes a right requires proof; but it is not always necessary that the proof be of the same degree of evidence. For, if the matter concerns a marriage to be contracted, or the separation of spouses, probability, or even doubt, suffices; but if the matter concerns the annulment or dissolution of a marriage, then full and juridical certainty is required. This is prescribed by the Holy Canons, and transmitted by Doctors and Tribunals: Cosci de sep. tor. coniug. lib. i. Cap. 6. num. 35. "When it is a question of a marriage already contracted, the fullest proof of the impediment is required by the Rota." (Rota. decis. 1317. n. 3. coram Lancetta) "Because, when it is a question of a very serious matter, and of an already consummated marriage to be annulled, proofs must be completely certain and conclusive." Now, therefore, it must be considered whether the accusers have presented such proofs. From the procedural records, it appears that the mother testified that she had had several carnal relations with Titus, and that these relations were complete; and that she revealed this out of the goadings of her conscience. But how much credence such a confession deserves must be determined from Chapter 22 on testimony, where a mother testified about an impediment of affinity, and nevertheless the response was, "If the marriage is firm, it should not be dissolved without the oath of several witnesses." And Cosci, loc. cit., lib. 2, cap. 18, num. 7. "In a marriage already contracted against which this impediment has been raised, the marriage is not immediately dissolved, not only if it is opposed by a relative, or by an outsider; because it often happens that this opposition, especially in the case of an illicit union, is made to annul the marriage out of envy or malice, and therefore, it is not easy to give credence to a single accuser." From the records, it appears that the mother labored in jealousy against her daughter because of her intimacy with Titus, whom she preferred before and after the marriage; and that there was no lack of suspicion that the mother was colluding with Titus. Furthermore, it must be considered who the accusers are, and whether they should be witnesses, given their reputation and conduct.

[*Latin ed. p. 634*]

634 that they may be able to vindicate their innocence. Such a mother did not exist, and this is confirmed by several witnesses, and by the very fact that, through her fault, the daughter approached the altar pregnant. Finally, it must be concluded that she is not to be believed, as is stated by all tribunals: "He who alleges his own wickedness is not to be heard." Nor is the confession of the mother, provoked by the stings of conscience, of greater value; this is also stated in Chapter 9, concerning him who knew his own blood relation, where a similar revelation was made by a certain young man to Innocent III: "Having returned to his heart, repentant of his deeds, he seeks counsel for his salvation." However, if such a revelation was sufficient to obtain repentance in the internal forum, it did not suffice

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for the Pope to declare the nullity of the marriage in the external forum. "Understand this, that in the judgment of the soul, when a fact is hidden, it is one thing; it would be another if it could be proven." Furthermore, it is clear that Titus and the mother intended to deceive, either because he reported to the Most Holy Prince that he had conceived a male child with this woman, who, however, died; or because, when questioned by his Ordinary, both stated that the fetus, conceived through carnal intercourse, was three months old and deformed. From this, it can be deduced that they were liars, for "he who is a liar in one thing, is a liar in all things." Furthermore, Titus confessed that he had intercourse with his mother-in-law for two or three years; however, one must not forget that Titus is the principal accuser in this case. Now, the law states that no one can be a witness in their own cause (Glos, in rit., Cap. super eo verb. Confessionem de eo qui cognov. consanguin.). And no one should doubt that his confession is favorable to him. On this point, see Cosci, loc. cit., where it is stated: "When it is a question of a marriage already contracted, which has an indissoluble bond, even the spouses themselves are not to be believed." The canonist, in examining the witnesses, reasonably proposed to investigate whether those who had been led by Titus and Lucretia had convincingly proven that they had contracted an impediment to marriage through the fact of affinity. Above all, the spouses A. testified that they had lived in the same house with Titus and his mother-in-law.

[*Latin ed. p. 635*]

The marriage was questioned because it was alleged that Titius had maintained a very familiar relationship with a certain woman, and that they had behaved as though they were husband and wife; thus, it was suspected that an improper relationship had existed between them. The canonist stated that the testimony of the spouses could not be accepted, since it only offered a suspicion, and that in a matter of such gravity, positive evidence was required. It was also stated that the woman's confession of her own impropriety should not be believed, because of her shamelessness. Witness B. attempted to prove that a habitual act of forgiveness had been performed at night, in the same room, on the same bed, with Titius and Lucretia, and her mother. However, this supposed proof was refuted by the testimony of another witness, who stated that the mother had always been very vigilant in protecting her daughter's honor. If the mother had been so vigilant, how could she have allowed her daughter to be subjected to such a scandal? Furthermore, another witness testified that Lucretia had placed a mark on the door of her mother's room in order to know whether Titius was entering; therefore, she did not habitually sleep with Titius, nor did she sleep with him and her mother. On the contrary, it was inferred that Titius's room was separate and distinct from his mother's room. However, let us suppose, for the sake of argument,

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that this testimony was true; what would be the consequence? It would not necessarily prove a violent carnal act. For, a presumption of violent copulation arises only when a man is found naked with a woman, alone with a woman, in a secret place, and in circumstances conducive to such an act. Chapter 12, concerning presumed copulation, does not contain any of these elements. There was no solitude, no opportunity for intimacy, and no opportune time. Although the testimonies of the witnesses were admitted, these circumstances would not necessarily lead to a presumption of guilt; but in the present case, doubt is not sufficient, but certainty must be established. Chapter 5, concerning those who know of consanguinity; Chapter 1, concerning those who accuse marriage; Chapter, concerning impediments to marriage. Therefore, the impediment of affinity was not proven. Other witnesses attempted to prove the aforementioned improper relationship. Witness F. stated that he had looked through a keyhole in the door of the room and had seen not Titius, but the Greek woman in the bed of Lucretia's mother; and that he had heard no noise, but everything had been completely silent.

[*Latin ed. p. 636*]

636. Regarding marriage: But neither does all of this overcome the carnal union, nor does it introduce presumption; for Amen, in *De delictis et poenis*, title 4, number 7, says: "There," meaning that presumption of union arises if, after a man and woman have been seen to enter the bedroom, the woman is afterward seen with disheveled hair, a face more flushed than usual, and in general, appearing horrified, unkempt, etc., concerning which details no mention was made; therefore, even the presumption of carnal union is dispelled. Furthermore, it should not be omitted that the Canonist has stated that Lucretia, with great industry, presented various witnesses to the heavens, so that she might be more certain about the scandalous relationship between her mother and Titus; indeed, another asserted that Lucretia herself was a witness to this scandalous commerce between them, because she slept with them in the same house. However, it is established that Lucretia did not state this in her complaint; but only asserted that she learned it from the confession of her mother, made to her seven years after the beginning of the marriage. Another witness testified that he could prove that Titus, once angered at his mother, asked to sleep in Lucretia's house, who, however, spent almost the entire night working with his mother. From these things, therefore, the other testimonies of the witnesses are derived. Regarding acts contrary to decency, another witness affirmed (although another denied it) that he had seen Titus committing acts with Lucretia's mother that were contrary to decency; but these acts do not constitute a carnal union, which is necessary to establish the impediment of affinity. Text in L., end, ff. *de rit. nupt.* Indeed, acts openly committed remove all suspicion of carnal union. Other witnesses testified either about

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lamentations made to them by Lucretia concerning the scandalous friendship of her mother with Titus, or that they learned it from another; but that they saw or heard nothing themselves, even though they frequented Lucretia's house. Therefore, these witnesses seem to be presented rather to exclude the crime than to prove it. On the contrary, it could be said about others that, regarding the matter, Mota, in decision 31, number 15, part 18, recent, and in Terracina, Immission of June 10, 1768, §, says: "In vain before Ratto," meaning that when, up to this point, the proofs and circumstances are imperfect in their own kind, and are contradictory to each other; and therefore, are unable to prove the alleged fact, they cannot be joined together.

[*Latin ed. p. 637*]

"Concerning the proof of a matter, it is necessary that it be established by certain and convincing proofs." Regarding the matter of the neighbors, all testified concerning the alleged affair and the rumor among the people, but not from their own knowledge. However, the Sacred Canons have a chapter on this matter, Canon 5, and "De eo, qui cognov. consanguin." which states: "A rumor is not to be considered valid unless it is accompanied by reasonable and trustworthy proofs." Nevertheless, if the rumor or report is based only on actions, and indeed certain ones, it should be called a rumor, and not a reputation. Concerning this, "Devoti Ius Can. Univ. Lib. 2 tit. 19" §. 10 speaks of proof and reputation. However, in criminal cases, and in more serious matters (such as this one), which require clear proofs, a rumor does not even have the force of partial proof, and this must also be kept in mind, when it is demonstrated by frivolous, malicious, or lying people. And in the cited chapter, Canon 5, we respond to your fraternity, that they should not be separated solely because of their confession or the rumor of the neighbors. The Canonist also added that, if the rumor had been well-founded, the parish priest could not have remained silent, but should have warned the Bishop of the impediment, as was customary in the city, especially when he had seen a license issued by the Ordinary to allow them to be joined in marriage without the usual announcements. If the parish priest remained silent and joined them in marriage, then that rumor should be considered to have had no solid foundation; concerning which, Reiffenstuel writes in Lib. 2 Decret, tit. 20 §. 1.2 n. 391: "There is the vain voice of the crowd and the rumor among the people, which has no certain authors, nor any probable causes or reasons for believing it, and such a rumor is not to be considered."

OPINION OF THE THEOLOGIAN. The Illustrious Theologian, after having stated several things about the history of the events, rightly observed: The judges and advocates of the courts, both of the first and second instance, considered (which he did not believe) this question to be an argument for public judgment. However, he said, there is no legal

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dispute in the matter, but everything is contained in this, namely, whether the fact of the previous union is to be established or excluded, and each must consider this. It was also certain to everyone, as stated in Acta Tom. VIII, fase. XCV. 41.

[*Latin ed. p. 638*]

658 Marriages entered into through such a union, which remove the impediment of affinity in the first degree of the direct line, and all advocates and judges should consider the cause of marriage to be favorable, and in case of doubt, should uphold the validity of the marriage: "For it is more tolerable," as the Pope says in Decret. L. 2, title 20, chapter 47, concerning witnesses, "to let some go unpunished who have violated the laws of men, than to separate those who are lawfully joined together against the laws of God." However, he asserted that there was a lack of proof to establish the fact of the previous union. He carefully examined and scrutinized the words of the witnesses and the confessions of the parties. But since he found nothing in them other than contradictions, falsehoods, or collusion between the parties, he concluded that it could not be demonstrated, either by the confession of the accused or by the testimony of anyone, that Titus had had carnal relations with the mother before he took her daughter Lucretia as his wife. Therefore, there was nothing but suspicions, rumors, conjectures, and similar things, which, indeed, might have been sufficient to prevent the marriage from being contracted; but they could by no means be sufficient to dissolve a marriage that had already been contracted, especially if the marriage had lasted for a short time, and the spouses had lived peacefully and securely in the marriage for several years. In this matter, the Canons clearly state in Cap. 3, title 13, book 4: Concerning the one who, before the marriage of his brother, knew the woman who would become his wife: we respond that, unless this was public and notorious, or proven by suitable witnesses, you should not allow that marriage to be entered into on that occasion. And in Cap. 5 of the same title: Concerning whether a husband who, before the marriage of his wife, knew her through carnal intercourse, should be separated from his wife by the judgment of the Church, if both confess it and some part of the neighborhood is said to have proclaimed it, we respond to your fraternity that they should not be separated because of their confession or the rumor of the neighborhood; since sometimes some people, wishing to conspire against the marriage, would easily confess to incest if they believed that, by the judgment of the Church, they would be able to achieve their goal. However, the rumor of the neighborhood is not so valid that, unless...

[*Latin ed. p. 639*]

6) That those who are of good character and worthy of investigation may present evidence that can properly invalidate a marriage. Also, Chapter 1,

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concerning those who accuse a marriage. If a young man and woman have lived together for several years without question, those who now accuse the marriage (based on the impediment mentioned in the preceding chapter) do not seem to be free from suspicion. Furthermore, if it is manifest that what is alleged is true, or if legitimate accusers and witnesses appear, then you will be able to receive further evidence and conclude the judgment canonically. But in our case, it is not manifest that what is alleged is true, nor do witnesses appear who are superior in every respect. Interpreters and Doctors have said that this text is consistent with their views: Reiffenstuel, in Decretal, book 4, title 19, number 16, states: "The judge ought not, and cannot, dissolve a marriage contracted before the Church, with regard to the bond, solely because one or both of the spouses themselves admit that they entered into the marriage with an impediment, such as a crime, or affinity, or consanguinity, unless sufficient evidence is presented." The common and certain text, expressly stated in Chapter 5, concerns those who know where the impediment lies, and the reason is added to these words: "For sometimes some people, wishing to collude against a marriage, easily confess to an incest (or another impediment), if they believed that, through a judgment of the Church, a way could be opened." However, the rumor of neighbors is not to be considered so valid, etc., as mentioned above. Schmalzgrueber, on the other hand, states these words: "It is not believed that the spouses are subject to an impediment, even if both confess to it, but this must be either public and notorious, or proven by suitable witnesses, as stated in chapter 3 and chapter 5 of this title, because there is a danger that they might collude against the marriage, and in this way a way is opened to dissolve a marriage that has been legitimately contracted, as stated in number 31." Finally, the theologian recounted the resolution of the Sacred Congregation, which is found among those collected by Prosper Lambertinius when he was a secretary (number 226), concerning a case of marriage in Ravenna. This recounted by the theologian was almost entirely complete.

[*Latin ed. p. 640*]

Regarding marriages, there was a case that presented the utmost difficulty. A certain Mark Anthony De Laurentiis and Felix De Sanctis, having unexpectedly summoned their own parish priest, who initially resisted, presented a marriage contract before him and witnesses, and contracted the marriage through present words. Such a hasty procedure occurred because, after a notification of the marriage to be celebrated in the parish church, the Vicariate General sent a chaplain of that church, who reported that he had been informed of an impediment preventing the marriage, namely, that Mark Anthony had had relations with Diana, the sister of the aforementioned Felix. The weight of this matter lies in the fact that it must be clearly determined whether the relationship

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between Mark Anthony and Diana could be sufficiently proven. After the completion of the legal proceedings, it was not deemed sufficient to prove the relationship; therefore, in response to the question of whether the marriage was valid in this case, the Sacred Congregation answered: "It is not established that the marriage is null." Having considered these matters, the theologian stated that he was certain that the matter should not have been brought before a public court, nor should it be now; but he urged the Most Eminent judges to now do what they had already done on July 26, 1873, in the Vegli marriage case. For then they had sufficiently demonstrated that impediments to marriage which are not legally proven do not have any weight in the external forum, but recourse must be had to the internal forum, where both reputation and conscience are considered (1). With these observations made by the learned theologian, and with other matters presented in the appendix for the benefit of confessors and also of Episcopal curias, the following reasoning was established. Given and not conceded, he said, that the marriage in question was opposed by the impediment of the first degree of affinity, arising from the illicit relationship previously had by the groom with the bride's mother; however, that impediment was hidden, and for seven years after the celebration of the marriage. Thus, as long as it was not known, no such impediment opposed the union; and after it was known, both... We have considered it appropriate, for the purpose of this question, to refer whatever the theologian has observed to the appendix.

[*Latin ed. p. 641*]

If the spouse in a marriage has persevered in good faith and without any suspicion, and this is confirmed by the mother, by the parish priest, by the Bishop, by relatives, and by known individuals; then it becomes clear that if the marriage was subject to an impediment according to the aforementioned canon, it was subject to a most hidden impediment. Finally, he expressed his opinion in the following terms: "From what has been presented, it does not follow that the marriage is null, or that the marriage was entered into with a hidden impediment of the first degree of affinity in the direct line, arising from an illicit union; but since we are dealing with an impediment of this kind, which is hidden, a public judgment should not have been undertaken regarding it, but rather the parties should have been referred to the Holy Penitentiary [office] for consideration, or for a dispensation; but now, even after a judgment has been rendered and the matter has been brought into the public domain, and given that a prior presumption of an impediment has been given, the marriage should still be considered valid, due to a presumed dispensation or revalidation in the forum of conscience. However, if the parties believe that they have acted in accordance with their conscience, they should still appeal to the forum of conscience, and under suppressed names, to the Holy Penitentiary, or to

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its delegate, or they should consult a confessor endowed with the faculties of the Holy Penitentiary."

THE DEFENDER OF THE MARRIAGE, BY OFFICE, GAVE THE FOLLOWING OBSERVATIONS: The Defender of the Marriage maintained that no credence should be given to the mother who reveals her shame; nor should anything be believed from the husband for the same reason. He also stated that the witnesses called should not be given more weight; unless one of them formally proves such a fault, and unless that witness is worthy of all belief and without any exception. For the witnesses brought forward were young women who do nothing other than repeat what they have heard from the mother, from the daughter, and from the daughter's husband. Moreover, manifest falsehoods and contradictions were found in their testimonies, and therefore they cannot constitute any proof to the effect of invalidating a marriage that was duly contracted due to the alleged impediment of affinity. With these considerations, he affirmed that it is not possible to expect any declaration of nullity of the marriage; because in this matter, the Congregation [of the Holy Office] in Ascoli has...

[*Latin ed. p. 642*]

642. Regarding the impediment of marriage, on June 4, 1768, §. De et seqq. should be consulted. However, the manner of proving the impediment of affinity is distinguished; for either it concerns a marriage not yet contracted, and in that case, a light proof of affinity suffices to impede it; or it concerns a marriage already contracted, and then full proof is required. Thus, Alexander III responded in Chapter 22 concerning witnesses: "We respond that if the marriage between them has not been confirmed, if the mother asserts that they are consanguineous, they should not be joined; but if the marriage has been confirmed, it should not be dissolved without the oath of many." Given these legal stipulations, it seems absurd that spouses in such a case could, through their revelations and assertions, render a legitimately begun marriage null. For if the Church commands the declaration of impediments, it also requires proof, and indeed judicial proof, with every exception, especially when, as in the present case, the matter concerns a marriage already legitimately contracted. These and other considerations have been presented in order to resolve the doubt as to whether there exists a nullity of marriage in such a case.

RESOLUTION. The Holy Congregation, having knowledge of the matter, considered it appropriate to respond on May 22, 1875: There does not exist a nullity of marriage.

FROM WHICH THE FOLLOWING IS DERIVED:

I. It is beyond doubt that the Council of Trent (1) declared marriages contracted with the impediment of affinity of the first and second degree

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to be null and void; so that if anyone has contracted a marriage with such an obstacle, even consummating it, nothing is done for the validity of the bond, but they must be entirely separated.

(1) Council of Trent, Session 24, Chapter IV, on marriage.

[*Latin ed. p. 643*]

MARRIAGES! 655. Although it is undoubtedly established by law that marriages contracted with the aforementioned impediment are null and void; nevertheless, since law arises from fact, it must be legally demonstrated by the spouses (if they wish to dissolve the marriage) that they, in fact, had contracted such an impediment before the celebration, so that no marriage may be declared valid by the Church for them. III. In matrimonial matters, it is not always necessary to require the same degree of proof; for if the matter concerns contracting a marriage, even doubt or probability is considered sufficient to prevent it; but if the matter concerns dissolving a marriage already contracted and consummated, absolutely certain and conclusive proofs are required. IV. Therefore, suspicions, conjectures, murmurings, and neighborhood rumors do not constitute full and legal proof for dissolving a marriage already contracted; and in such cases, the validity of the marriage is often left in doubt: because causes for marriage are to be favored. V. Nor is it necessary for the spouses themselves to provide evidence of their faith in an external forum; firstly, because some may conspire with each other and easily confess to incest if they believed that the Church, through its judgment, clearly favored their wishes; secondly, because it is not easy to offer credible testimony when revealing one's own wickedness (1). VI. In this matter, the question is not about law, but about fact; so that it would have been sufficient to explain or refute the existence of a union with the mother before the marriage with the daughter was consummated. (1) It is pleasing to us that the renowned theologian noted that care must be taken to avoid scandal if recourse is had to the Holy Penitentiary, and to publicize hidden impediments; therefore, in practice, it is often difficult to provide full and legal proof of such an impediment through the spouses' own conscience, and it is more appropriate to provide public external proof.

[*Latin ed. p. 644*]

644 APPENDIX. It is so clear that those who live in faith and obedience to the Holy Catholic Church should follow this rule; namely, that they should be absolved from internal forum impediments. Indeed, in the appendix to the moral theology of Gury, published by the Sacred Congregation of the Holy Office in 1872, volume 2, page 680, the following decree was given, issued by the Supreme Congregation of the Holy Office in response to a question from a certain Apostolic Vicar. This decree did not establish any new law, but rather explained what is established concerning this matter,

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whether in the Apostolic Constitutions, or derived from the practice of the Sacred Congregations and the style of the Roman Curia, or finally, transmitted by approved doctors. Therefore, on Thursday, August 1, 1866, the Fathers decreed in this manner: "Secret acts are [to be considered] such that dispensations, whether granted directly by the Apostolic See, or by pontifical delegation, concerning any prohibited degrees of consanguinity, affinity, spiritual or legal relationship, as well as public honor, are invalid, if the spouses, before the execution of such dispensations, or before or after obtaining them, have committed a fault, and whether questioned or not, have maliciously or even unknowingly concealed the fact that they have entered into an incestuous relationship, whether that relationship is publicly known or even hidden, or have concealed the intention and purpose with which they entered into that relationship, in order to more easily obtain the dispensation. It suffices that one of the spouses has committed this fault or has had the aforementioned nefarious intention. This, indeed, is not only commonly taught by approved Doctors, but is also confirmed by the Most Holy Pope Benedict XIV in the Constitution which begins: *Pastor bonus*, § 41, 42, and therefore must be taken care of by the Apostolic Vicar and by missionaries, so that..."

[*Latin ed. p. 645*]

APPENDIX 6: Those who seek dispensation from impediments to marriage are to be warned, with due prudence and caution, considering the variety of persons and circumstances, that no dispensation is to be granted to them if they have committed incest against each other, or if they have intended to do so, in order to more easily obtain a dispensation, even if they have not manifested the offense or that nefarious intention. Furthermore, it is not regularly required that Missionaries question the betrothed about these matters; however, they may do so if they judge it necessary and opportune. Certainly, care must be taken that the betrothed are not urged to make this confession through importunate questioning, especially if the union has remained hidden, and the aforementioned secret intention is not to be revealed in the external forum by anyone. For those who have obtained a dispensation in the external forum regarding impediments, with the reservation of a union that has taken place between them, which they cannot reveal without detriment to honor, or with the expression of a carnal union but with a tacit, hidden, and malicious intention present in the very union, in order to more easily obtain the dispensation, access is open to the forum of conscience. They themselves may, even under a suppressed name, appeal to the Holy Office of Penitence or to the Delegate of the Holy See who granted the dispensation, or they may present themselves in the forum of conscience to the same Delegate in order to obtain the dispensation or the validation of the dispensation already obtained. And this validation in the forum of conscience is to be granted by the authority of the Apostolic

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See, according to the mandate of the Holy Penitentiary, or by the Vicar Apostolic, or by a Delegate from the Holy See, even through a confessor appointed by him, after prior absolution in the usual form of the Church, from any sentences, censures, and ecclesiastical penalties, if any have been incurred due to incest and similar excesses, with which they are involved, as well as from the incest itself and the excesses as mentioned above, with the prescribed salutary penance for the fault. If, however, the union is publicly known, or if the betrothed have manifested it in the external forum, absolution and dispensation are to be granted in the same external forum. Furthermore, with regard to dispensations that have been obtained up to now in this Vicariate, and concerning the aforementioned reservation of hidden and invalid unions, attention is to be given...

[*Latin ed. p. 646*]

646 APPENDIX: Those [marriages] which were lawfully contracted and obtained, are not to be disturbed; nor are those who contracted marriages there, with the help of such dispensations previously granted, to be disturbed, up to the day on which the present rescript reaches the hands of the Apostolic Vicariate. Nevertheless, the Apostolic Vicariate should diligently, secretly, and with the utmost circumspection and caution, consider the possibility of renewing the consent in particular cases, if it should happen that some who were joined in this manner are not acting in good faith, or even, if they are acting in good faith, the Apostolic Vicariate should certainly foresee that they will freely and willingly renew their consent, warning them secretly of the nullity of their marriage, so that from their renewed consent no scandal or the danger of any other evil may arise. But if anyone, doubting the validity of the dispensation and the marriage, obstinately refuses to renew their consent, the matter must be referred to the Apostolic See, with all the circumstances of the case carefully explained. Therefore, from this decree, we have a rule that we must follow. And it would be incorrect for anyone to claim that it does not concern the impediment itself, but rather some circumstance accompanying the impediment. For, first, I confess that I do not understand the difference, in terms of the substance of the matter, between an impediment that nullifies a marriage, and for which a prior dispensation has not been granted, and a circumstance of the impediment that, if omitted, does not remove the impediment even with a dispensation. Indeed, the rule that the Sacred Congregation for the Propagation of the Faith lays down on this matter for missionaries contains these words: "It is not surprising that missionaries (and indeed, also parish priests and ordinaries?) are so concerned about impediments arising from consanguinity and affinity, according to ecclesiastical law, which, after diligent inquiry, may remain unknown." Indeed, the evident reason demonstrates even more strongly the applicability of the rule to the impediments themselves. For it would be less incongruous to inquire about a dispen-

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sation concerning something between themselves; than about something done by one of them with a third person; and from their revelation, the fact would be revealed.

[*Latin ed. p. 647*]

APPENDIX 647. Concerning a scandal and infamy arising from marriage, the following is considered: a marriage is contracted with a dispensation, but no consideration is given to the scandal and disgrace of a third person, with whom one of the parties has confessed to having sinned; nor are the peace of married couples and the tranquility of families disturbed by the knowledge of those who are joined together; but they are most disturbed by the knowledge of an illicit union from which the impediment itself arose. Therefore, let it be firmly established that the rule stated in the aforementioned decree holds a proper and paramount place when dealing with hidden impediments. These, indeed, are not generally to be made known in public, much less is anyone obligated to reveal them to anyone in public; but provision is made for their removal through recourse to the Holy Penitentiary, or to the Apostolic Delegate, or even, in certain cases, to the Ordinary (See Benedict XIV, *De Syn. dioec.*, bk. IX, chap. 2, nos. 1 and 2). And anyone in need of this remedy can, either personally or through anyone he chooses, or through his confessor, or through the parish priest, or through the Bishop's Curia, or in any other way, submit a written petition in his own name, either to the Cardinal Prefect of the Holy Penitentiary, or to the Holy Penitentiary itself, or to the officials of that sacred tribunal, or to a friend who will deliver it to the Holy Penitentiary. In this way, everyone can seek assistance without any expense, since the ministers of the Holy Penitentiary never accept anything, not even if it is freely offered; and they offer everything freely, with a serene countenance. The methods and formulas for appealing or petitioning are available to all in any compendium of moral theology, with the single caveat that the specific case must be added, along with the address to which the response must be sent, unless someone wishes to receive it at the Holy Penitentiary office itself. And a dispensation is rarely, or almost never, denied for contracting marriage, provided there is a reason that is consonant with reason, which is almost never lacking; but such a reason is always approved, when the matter concerns marriages that have been contracted and publicly celebrated. Indeed, very few marriages can be dissolved without serious consequences following, which must certainly be prevented by a dispensation. Those who...

[*Latin ed. p. 648*]

648. A dispensation is granted for this reason, not only if the impediment is entirely hidden, but also if it is known to a few; for it is still considered hidden, even if it is known to five or six people in a town, or to seven or

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eight in a city, provided that it has not been divulged by those who know it. And since the dispensation must be executed only in the sacramental forum, that is, in the Sacrament of Penance, the entire matter is treated as part and appendix of the sacramental forum, so that it follows it in almost everything, especially in two respects: first, that full faith must be given to the person making the request, whether for themselves or against themselves; yet, so that the assertions of that person, for the external forum, although under oath, may neither help nor hinder, indeed, they may not even be alleged or brought forward without manifest dishonesty and injustice; secondly, that the entire matter must be completed in all respects, and in some cases by breaking the silence, with the participation of all and each, and that the letters by which the dispensation is granted must be torn up by the confessor after the execution, so that no copy of them remains, under pain of excommunication *latae sententiae*. If, however, it should happen, even after a marriage has been contracted in virtue of such a dispensation, that the impediment, which was hidden, becomes public, the Ordinary of the place may separate them from each other; but in the forum of conscience, they are true spouses, because they were truly and legitimately dispensed in virtue of the letters of the Holy Penitentiary, as far as the forum of conscience is concerned; and thus, if, at the time of separation, the scandal being removed, they rendered to each other what was due, they would not commit any sin, because the impediment, which was then hidden, would have been truly removed by the secret dispensation of the Holy Penitentiary. Moreover, the Bishop, as judge, and the parish priest, warned in secret by the confessor who ordered the execution of the Penitentiary letters, must entirely acquiesce in the testimony of the confessor, and must not cause any trouble to those who have obtained the dispensation in that manner. Concerning all of these matters, see the *Institutio ecclesiastica* 87 of Lambertini, from which source these few points are derived. To this, it must be added that marriages openly celebrated, which are subject to a hidden impediment, are...

[*Latin ed. p. 649*]

APPENDIX 49: It has been the case that, not only has it never been denied, as has already been stated above, but it is also easy to implement, and it is not always necessary for both spouses to be aware of it; much less is there an impediment due to ignorance, provided that this consent, from the beginning, that is, when the marriage was publicly contracted, perseveres. And this is true not only when an authority from the Apostolic See intervenes to heal the root of the problem, which is perhaps more frequently granted today, but also when an ordinary dispensation is granted by the Holy Penitentiary, as the most excellent Doctor Alphonsus teaches in *Moral Theology*, Book VI, Tractate VI, paragraph 1115 and following. Indeed, today, it is scarcely necessary to appeal in cases of the invalidation

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of such marriages, and it will suffice to make a sacramental confession to a confessor who has obtained from the Holy Penitentiary the faculties that are named in the thirteen cases. For among those faculties (which are not only granted to every Bishop, but also to every parish priest who requests them, indeed, to every confessor recommended by the Bishop), the following is also found, expressed in these words: "XII. Dispensation regarding a hidden impediment, of the first degree, or even of the first and second degrees of affinity, arising from an illicit union, when dealing with a marriage contracted with the aforementioned impediment already present; but only if this affinity arises from a union with the bride's mother, and the birth of the bride precedes the union itself; the penitent being mindful of the necessary secret renewal of consent with his supposed wife or his supposed husband, being informed, or informed, of the nullity of the prior consent, but in such a way that the sin itself is never revealed; and to the extent that this information cannot be given without serious danger, according to the rules handed down by approved authors; the occasion for sin is removed, and penance is prescribed, a salutary penance, and sacramental confession once a month, for a period to be determined at his own discretion." From this prescription regarding the use of this faculty, it becomes clear that the doctrine of approved authors, and especially of the aforementioned St. Alphonsus, has resolved the most important point on which Lambertinus hesitated in the aforementioned *Institution*.

[*Latin ed. p. 650*]

ON ALMS OFFERED FOR MISSES. On April 24, 1875, Session 22, a decree concerning observance and conduct during the celebration of the Mass was issued. Let the readers remember that on July 25 of the preceding year, the Congregation of the Holy Council resolved several doubts concerning alms offered for Masses (1). These resolutions, published for the first time, aroused new doubts regarding certain specific cases, which were presented to the same Holy Congregation by individuals and from various places, seeking clarification. These and other matters pertaining to the same subject were considered, and on April 24, in the aforementioned session, a definitive ruling was issued. It is best to indicate the individual points and the principal arguments of each. EXPOSITION OF FACTS. 1. In the Diocese of T., there is a well-known sanctuary dedicated to the Blessed Virgin, where countless pilgrims visit daily, and they offer stipends for Masses to be celebrated, which are generally greater than the customary amount. The Ordinary, seeing that so many Masses could not be celebrated in the sanctuary, ordered them to be celebrated elsewhere, retaining a fourth part of the alms offered for the sanctuary; he believed that the faithful, by offering more generous stipends, intended to contribute to the expenses and embellishment of the sanctuary. He ordered that daily, for all those who offered, only one Mass be celebrated in the sanctuary. Then, the fourth part

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of the alms was not only used for the needs of the sanctuary, but also (1) See Fasciculum TP, Volume VIII, page 10.

[*Latin ed. p. 651*]

CONCERNING THE ALMS OF MISSES 651: The clerics added this to the support of the poor. Finally, in the year 1873, he requested that the Congregation of the Holy Council approve this method of operation, and he received a response – with prior approval regarding the past, and with the understanding that a larger number of Masses could be celebrated in the designated church, for the sake of the translation of the remaining works, with the faculty to use the alms from these Masses, so that one franc would be set aside, and half of the portion that exceeds that one franc would be retained, to be faithfully allocated to the aforementioned cause under the authority of the Bishop, according to his judgment and conscience, for a period of five years. But in the following year, the same Bishop reported that significant difficulties were arising in the division of the remainder exceeding one franc; and he requested that a tax of one franc be assigned to the priest celebrating in the common locality. Furthermore, if the amount exceeded five francs, it should be given to the Sanctuary; if it did not exceed five francs, half should be given to the Sanctuary, and the other half to the major and minor seminaries and diocesan colleges. The Bishop, T., argued that whatever exceeds the common and manual alms established by diocesan law is presumed to be offered by the faithful, not by other priests celebrating, but to the Sanctuary itself and for the common good of the Church. He also pointed out that he had two seminaries and two ecclesiastical colleges in his diocese, capable of accommodating up to nine hundred students; and that the revenues for supporting these educational institutions were entirely insufficient. He added that, given the poverty of the inhabitants of the locality of A., these institutions could only be sustained through the proposed allocation of alms, and that he could accept the request of the inhabitants to make their own college, which is currently municipal, into an ecclesiastical one. Finally, in order that the piety of the benefactors might be praised, he proposed that they be informed of the use of a portion of the alms, exceeding the synodal tax.

2. The Archbishop L. reported that a large number of Masses are celebrated at the Sanctuary of the Virgin Mary in F., for which a tax of two Gallican livres is established for that place. If the Sanctuary's chaplains celebrate there, they receive the full tax; whereas, on the other hand, external priests celebrating there receive only one livre and 25 centimes. But there are always many...

[*Latin ed. p. 652*]

652 CONCERNING SUPERIOR ELEEMOSYNAS OF MISSES which cannot be celebrated within the year, of which ten thousand are delivered to

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the Archbishop. He, however, is to commit the same number to be celebrated elsewhere, after receiving the eleemosyna of one missal; therefore, in his hands remain annually ten thousand missals which he expends for the support of the Cathedral clergy. Finally, other Misses which cannot be celebrated within the year in the Sanctuary are to be delivered to the Episcopal Curia to be celebrated elsewhere: after deducting first from each one a missal, to be used by the Rector of the Sanctuary for expenses of worship and for the support of the penitent brothers and those who care for the Church and the Sacristy. Furthermore, the Superior, who was Archbishop at that time in the year 1864, noted that he had requested the renewal of this faculty in such a manner; which, although an authentic copy cannot be found, was considered by many to have been granted by the Pontiff for several years previously: and a rescript was obtained "with prior, as it were, healing concerning the past." Therefore, he requested confirmation of this rescript for another decade.

3. The Superior of the Monastery of T. in the province of B. stated that for eight years he had been accustomed to receiving stipends for Misses, and to retain half, or even a greater portion, for the new foundation of the Monastery in those regions; the remaining portion, however, was given to the priests celebrating, who, being willing, were content with this. He affirmed that he had acted in good faith, based on the persuasion of the Abbot, who believed that his Order enjoyed a privilege of collecting and distributing Miss eleemosynas in this manner for new foundations. However, now that he had become doubtful, he requested both healing and absolution from censures concerning the past, and also the granting of such a privilege for the Monastery already existing, and for others being founded, and finally, the faculty of receiving Misses even for a period of five months. He supported his petition with the testimony of the Procurator General, who asserted "that all new foundations in those regions can arise and prosper only through eleemosynas." Finally, adding other prayers, he stated: "For the Misses already celebrated, he had given twenty Austrian gulden to the priests; however, he could not determine whether this was sufficient, since the number of Misses..."

[*Latin ed. p. 653*]

Regarding offerings for Masses: He had earned only what was due, and had not accepted any payment beyond what was owed. At present, he had in his possession a large number of Masses, the number of which he had noted, and the customary payment for each was twenty *oboli*; however, he had not actually received the varying amounts that had been given to him; he was therefore praying that the Masses celebrated for him might be granted, and that the remission of the payment for the Masses exceeding those celebrated might be permitted.

4. Bishop C., following up on the aforementioned resolutions of July 25,

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1874, stated that he had forbidden the priests of his diocese "to accept or solicit from ecclesiastical or temporary officials any books whatsoever" in lieu of offerings for the celebration of Masses.

... But it was doubted "whether" such a prohibition was truly included in the aforementioned resolutions, and therefore he proposed two questions.

I. "Do those act illicitly who, although not booksellers or merchants, or otherwise seeking to obtain the celebration of Masses, are true ecclesiastical men to whom, spontaneously, offerings for the celebration of Masses are given by the faithful, and who, in order to promote good books or religious periodicals, offer to celebrate Masses for priests, so that these priests may accept, in lieu of payment, books or periodicals? "

II. "Do such priests act illicitly, who either accept the Masses offered by the aforementioned ecclesiastical officials, or solicit them to be celebrated, so that they may, in lieu of payment for the Masses already celebrated, receive or solicit books or periodicals, when they know, or persuade themselves, that they would not otherwise obtain those same Masses for the effective celebration of the offering?"

5. The administrator of this journal reported to the Congregation of the Holy See that whatever profit was derived from the sale of the same journal was spent on the College of Apostolic Missions recently established in the city by the Most Holy Father; and that, frequently, many offerings for Masses were made, which he had up to this point entrusted to priests, some of whom had given the journal its name, or had purchased the *Edition Manuale Commentaria in Apostolicam Constitutionem Apostolicae Sedis* written by the Reverend Peter Avanzini. Such a payment of offerings.

[*Latin ed. p. 654*]

5. Furthermore, regarding the number of Masses, which would equal the price of the item, nothing was retained. However, having learned of the aforementioned resolutions of the Holy Congregation, so that he might not admit anything illicit, he refrained from such a method; although this caused considerable inconvenience to the pious institution. Therefore, he himself inquired whether he might safely follow the same course in the future.

6. The Editor of the *Mediolanensis* journal, "Le Missioni Cattoliche," a weekly illustrated bulletin, in order to consult his own peace of mind and that of his associates, reported: "To priests who lack the stipend for Masses, and who, on account of poverty, are unable to pay for the journal, so many additional Masses are offered to be celebrated (which are often distributed) as correspond to the price of the journal; the entire amount is considered as alms, and afterwards, authentic confirmation is received of the Masses celebrated." He also inquired whether he might continue with the same method. Having learned of the custom, the Archbishop of Milan confirmed

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the account of the facts and recommended the utility of the journal.

OBSERVATIONS FROM THE OFFICE.

In general, concerning points 1 and 2, that is, concerning Bishop T. and Archbishop L., the case described in the document was considered to be included in a doubt presented on July 25, 1874, under number eight, and conceived as follows: "Is it permissible for Bishops, without special permission from the Holy See, to take something from the alms of Masses, which the faithful are accustomed to offer to larger sanctuaries, in order to provide for the adornment and embellishment of those sanctuaries, especially when they lack their own revenues?" To this doubt, the response was "Negative, unless with the consent of the donors." Therefore, it was argued that it was only permissible for those same Bishops to take something from the alms of Masses, if the faithful consented to it; otherwise, permission must be requested from the Holy See. For, in the distribution of the alms of Masses, the intention of the faithful is that these be given entirely to the priests who celebrate the Sacred Mysteries, and that, by offering them a more substantial stipend, they may draw greater fruit from the Sacrifice, according to the teaching of St. Alphonsus. Therefore, any diversion of the stipend, even for a pious purpose, is contrary to the intention of the faithful.

[*Latin ed. p. 655*]

CONCERNING THE ALMS OF MISSES, the exchange in Ferento must be considered; just as the exchange is present when the celebration is completed in a place not designated by the offerers. Indeed, the will to exchange pertains to the Pontifical authority, to whom God has entrusted the treasure of the Church, and from which it can provide if something is lacking from the fruit of the Eucharistic Sacrifice. For when both the Bishop and the Abbot have appealed to the Pontiff, it must be determined whether the reasons are present for their prayers to be admitted: or whether a condition must be added so that the faithful are warned of the increase of the alms to be distributed for these purposes, as proposed by Bishop T., and as it is customary to do, according to S. C. C. from the Institutes of Benedict XIV, 56, No. 14 (1). Regarding the Superior Monastery of T. in the Province of B., it was noted that this was a case in which someone collects Masses to have them celebrated by others, retaining a portion of the alms, which is prohibited by the Decrees of Urban VIII and Innocent XII to the Seventh, and by the Constitution of Benedict XIV of April 30, 1741, which begins with "Quanta Cura," and finally by the celebrated Constitution of the Most Holy Father, published on October 14, 1869, which begins with "Apostolicae Sedis Sect. 2, No. 12" (2), and that these decrees have been constantly observed by the Congregation of the Holy Council. Good faith will suffice to obtain absolution and remission regarding the past, but it

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must be determined whether he will also be able to follow the same path and method in the future. Indeed, from one loaf, one can see the benefit that pious institutions draw from the method of acting, so that the people (1) Benedict XIV, in the aforementioned passage, says: "If so much money (in some church or altar) is contributed for Masses to be celebrated therein, that within the prescribed time they cannot be fulfilled in that church or altar, as those who contribute the stipend often request, it is customary for the Holy Council to order that a table be publicly displayed in the temple, which declares that the sacred rites that can be performed in that church or altar within a certain time have been completed; those that remain are to be celebrated in another church or in another altar of the same church. In this way, those who contribute the alms will have everything in view, and will be able to more easily give way to piety, as they please." (2) See volume 5, fascicle 6, page 295. You will find diligently elaborated notes on this paragraph by Father Peter Avanzini in the edition of the Manual Commentary on the Apostolic Constitution, under Note 34.

[*Latin ed. p. 656*]

656. Regarding alms collected for Masses, let the Cattolica religion shine forth, and let those be drawn to embrace it. Furthermore, it must be considered that the priests who celebrate [Masses] are content with a smaller stipend, and that so many sacred rites are performed as the faithful request. On the other hand, it is necessary to consider what St. Alphonsus, in his *Moral Theology*, book 6, number 322, states: "The priest who celebrates [Mass] does not acquire dominion over the alms otherwise than according to the will of the giver, who not only wishes that the Mass be celebrated, but also that it be celebrated with such a stipend; for when he offers a stipend, he does so with the intention of receiving a more abundant fruit from the celebration of the Mass; therefore, he who, having offered a smaller stipend, has it celebrated by another, sins against justice, not because he defrauds the one who offers the alms for the Mass, but because he does not follow the intention of the giver, who wishes that the Mass, from which he expects fruit, be celebrated in that manner; and because such an intention enters into the substance of the contract, therefore, if the priest retains a part of the stipend, he unjustly retains it against the will of the giver." To these points, we must add: 1. That the priests who celebrate [Masses] are often those who do not ordinarily have the duty of celebrating Masses, and that they would receive nothing if they did not accept a reduced stipend; therefore, it cannot be presumed that they freely and spontaneously cede a portion of the stipend to the monastery; 2. That, due to the great number of Masses to be upon celebrated, it is impossible to observe a place or time designated by the offerers; 3. That the collection for Masses is often carried out in many and various places by private authority, as approved by the aforementioned Constitution of Benedict XIV, which begins "Quanta Cura," be-

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cause it contains a certain deformity and ugliness; 4. That this method of acting introduces a certain new kind of negotiation, which is liable to punishment both in terms of the person and in terms of the matter; 5. That the Holy See has imposed a greater excommunication on ecclesiastics or missionaries who, in mission territories, engage in any kind of negotiation under any pretext, as stated by Urban VIII in the Constitution *Ex debito*, and by Clement IX in the Constitution *Sollicitudo* of January 17, 1669. From these considerations, it is proposed that the requested permission should not be granted in the future.

[*Latin ed. p. 657*]

ON ALMS OF MISSES 657. Questions concerning the alms of Masses, whether obtained through books or subscriptions, are addressed. These involved both the Bishop of Cattolica, the Administrator of this publication, and the Editor of the Milanese journal "Le Missioni Cattoliche." These expenditures were made partly by the priests celebrating the Masses, and partly by the Editors or Administrators of the publications. It was considered that a doubt had been presented to the Sacred Congregation the previous year, which stated: "Do those act illicitly who receive stipends instead of books or other goods for celebrated Masses, without any negotiation or appearance of dishonest gain?" The answer to this doubt was: "No." Others held the resolution of the Holy Penitentiary of October 6, 1862, which addressed the doubt: "Is it permissible for the Editor of a religious journal, after being requested by the Holy Penitentiary, to offer his journal to priests on the condition that they celebrate a certain number of Masses, in return for which payment is made by others for the journal?" This was dismissed with the response: "Affirmatively, provided the Masses are celebrated." However, expressing his own opinion, he stated that such resolutions, while excellent in the abstract, do not resolve all the doubts that often arise in practice, especially for the editors or administrators of journals. Indeed, on the part of the priests celebrating the Masses, since each, after celebrating the Masses, becomes the master of the alms, and can dispose of them as he wishes; it is undoubtedly licit for them to act in this way, provided that any appearance of negotiation or dishonest gain is avoided. This condition is necessary, for if the priests celebrating the Masses knew with certainty (certain knowledge is required; because a mere presumption or supposition would not be sufficient to establish complicity) that the editors of the journals were engaging in a negotiation regarding the alms, and that they themselves were participating in this dishonest transaction. And indeed, it is licit to give and receive books, food, and other goods as alms for Masses, as is commonly done; and especially as stated in Reiffenst., book 5, decree 3, § 10, De Simon, N. 204 and following. However, journals are of the greatest utility to priests in this time of so much error, which

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audaciously attacks both divine and human rights.

[*Latin ed. p. 658*]

Regarding offerings for Masses, the matter does not proceed in the same way for the editors or administrators of periodicals. For it is certainly the case that they act lawfully if those offering consent that the Mass, to be celebrated in their name by priests, be fulfilled. But it often happens that perpetual Masses also reach them, and sometimes from distant regions; in which case, unless the founders permit them to be celebrated in any place and at any time, they do not have the power to arrange for the celebration, for they are not the masters of the alms. Furthermore, in order to satisfy those who request it, they sometimes gather a large accumulation of offerings; and this is disapproved of by Benedict XIV in the Constitution which begins *Quanta Cura*. For, besides other inconveniences, it frequently happens that it becomes impossible to fulfill the obligations undertaken within a short time. Indeed, in the manuals of Masses, Saint Alphonsus in his *Moral Theology* restricts this short time to two months, if we are speaking of individual priests to whom the celebration is entrusted; but for Churches or sanctuaries which are burdened with other obligations for Masses, one month is not sufficient, according to the decree of the Holy Congregation of the Council of July 17, 1755 (1). These matters having been noted here and there, the following questions were proposed:

I. Whether and how one should respond to the requests of Bishop T. in this case.

II. Whether and how one should respond to the requests of Archbishop L. in this case.

III. Whether and how one should grant to the Superior T. of the province of B. absolution and remission regarding the past concerning Masses both celebrated and to be celebrated in this case.

(1) To the Holy Congregation of the Council on July 17, 1755, the following question was proposed: "Since in the declaration printed on page 11, above the decrees concerning the celebration of Masses, it is permitted to accept other offerings for Masses to be celebrated, provided that it may be possible to satisfy everyone within a short time, some Superiors of religious orders, for the sake of the peace of conscience, as they say, again ask: whether the said short time for celebrating Masses is to be considered a time of two or three months – and the resolution was: 'The short time is to be understood as being within one month.'"

[*Latin ed. p. 659*]

ON THE ELEEMOSYNAS OF MISSES 659

IV. Whether and how assent should be given to the prayers of the afore-

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mentioned Superior.

V. Whether and how the Decree of Bishop C., absolutely prohibiting the priests of his diocese from receiving books or religious periodicals for celebrating or having celebrated Masses, should be upheld.

VI. Whether and how those moderators or administrators of religious periodicals, who entrust the celebration of Masses to priests, retaining from their eleemosynas a price corresponding to the value of the periodicals themselves, should be approved. And to what extent.

VII. Whether and how absolution and remission regarding the past, and the faculty regarding the future, should be granted to those moderators or administrators of religious periodicals, who have submitted a petition on this matter to this Holy Congregation.

RESOLUTION. The Holy Congregation, having maturely considered the matters, responds as follows:

To I. Affirmative: provided the donors are informed about the transfer, the postponement of the celebration of Masses, and the use of any excess eleemosynas, with the consent of the Most Holy Father.

To II. Affirmative for ten years: from the date and in the form of the preceding indult, and with the understanding that the Archbishop should remind the donors after the lapse of ten years, with the consent of the Most Holy Father.

To III. Affirmative; one Mass should be celebrated with singing, with the entire community present, with the consent of the Most Holy Father.

To IV. Negative, unless it concerns Masses spontaneously offered; the donors should be informed as in the first doubt, with the consent of the Most Holy Father.

To V. The doubt "Whether and how one should respond to Bishop C. in this case" is reformulated. Negative in all respects, to both.

To VI. Negative: provided that nothing is taken away from the will of the founders or donors regarding the amount of the stipend, the place, and the time of the celebration of the Masses, excluding any studious collection of Masses, and provided that the person to whom the Mass is offered is informed of the subsequent celebration of the Mass, with the consent of the Most Holy Father.

[*Latin ed. p. 660*]

660 CONCERNING ALMS FOR MISSES. Regarding item VII, as stated previously: and considering the particular circumstances for the granting of a delay in the celebration, but not exceeding six months, having given one's word to the Most Reverend. FROM THESE, THE FOLLOWING MAY BE GATHERED: I. It is forbidden to make any arrangement concerning the alms for Masses that is contrary to the intention of the donors. II. Whenever a translation, or a delay in the celebration, or the conversion of a portion

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of the alms exceeding the designated amount, into pious uses, appears to be opportune and useful, the donors must be informed of such changes. III. All those who, with good intentions but otherwise, have acted differently, ought to seek absolution for the past and a remedy. IV. Clerics to whom, spontaneously, the alms for Masses are given by the faithful, and who intend to use them for the publication of good books or religious journals, act illicitly if, when priests request Masses to be celebrated, they assign them books or journals in lieu of the stipend, retaining the alms. V. Conversely, it is permissible for priests celebrating Masses assigned to them to accept religious books and journals in lieu of the stipend. VI. The editors or administrators of periodicals are permitted to follow the same procedure, provided that it does not contradict the will of the founders or donors, excluding any diligent collection of alms for Masses, nor any new arrangement concerning the celebration of Masses. VII. The delay in the celebration must never be extended beyond six months.

[*Latin ed. p. 661*]

On May 22, 1875, the Dean of the Cathedral Church, O. Sanctissimo, presented the following: "In the Cathedral Church, the 'Rorate' Mass, with singing and organ, was established on June 9, 1732, during the Advent of the Lord, on Sundays and feast days, except those otherwise specified." The terms of this establishment are as follows: "We, the Praepositus Decanus, Senior, and all the Canons of this Cathedral Church, testify, affirm, and declare to be known, for ourselves and for our successors, that the venerable Lord Ditericus Henricus de Nehem from Gondermühlen, Canon Senior of this Cathedral Church, bequeathed 800 thalers to this end, so that, from the accruing annual interest, at any time in the morning during the Advent of the Lord, at the seventh hour, except on Sundays and feast days, the 'Rorate' Mass, or Advent Mass, with singing and organ, may be celebrated in our high Cathedral Church, as has been done until now, and that the Reverend b. m. Georgium Klecker, Vicarius Jubilarius of the aforementioned Church, by a testament established by him, intended to ensure that this devotion would remain forever, and that it could not perish: for this purpose, the aforementioned Vicarius Klecker irrevocably stipulated and agreed with the undersigned executors, as follows: I. We undertake, for ourselves and for our successors, to always celebrate, during the Advent of the Lord, at the aforementioned time in the morning, at the seventh hour, in honor of Jesus Christ and His most holy Virgin Mother Mary, with singing and organ, the Mass necessary for this purpose, and to provide what is required for it. II. VI. Follows the delegation and assignment of the sum of sixty thalers per year, from which sum, after deducting the expenses for each celebration of

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this Mass..."

[*Latin ed. p. 662*]

662 APPLICATION TO THE MASS: The ordinary stipend (ten Prussian groschen, equivalent to one hundred and twenty-five [units of currency]) is to be paid for a private Mass that is not sung, administered by a minister. However, a doubt has arisen within the Chapter of the Cathedral concerning whether this *Rorate* Mass, established in the aforementioned manner, should be applied [for the benefit of a soul]. For some of its predecessors, due to a tradition established for themselves, omitted to apply the endowment in good faith; others applied it. Therefore, in order to resolve this doubt, and so that a certain opinion may be given to the Chapter by the Holy Apostolic See, the Chapter humbly requests [it]. The prayers received by the Sacred Congregation were sent to the Bishop with the following response: "Having heard the Chapter, and others who may be interested, the Bishop is informed, and the information given by the Bishop was expressed in these words: 'Before the restoration of this Chapter, it appears that almost all those to whom the office in question pertained, avoided applying the *Rorate* Mass, as I myself have done for 28 years. However, they do not appear to have had accurate knowledge of the foundation. But now, having considered the matter more carefully, it appears that the foundation, made in the year 1732, intended nothing other than that the Mass, which was already in use, should be celebrated solemnly, with singing and organ, and for this purpose alone, the celebrant was to receive 10 groschen, which would not have been sufficient for a solemn Mass with application [for the benefit of a soul]. Therefore, I now believe that the application [for the benefit of a soul] was not intended by the foundation of this Mass. However, whether the Mass, which was already celebrated without singing, or for some reason or by obligation, had already been applied [for the benefit of a soul], I do not dare to give an opinion on this matter.' Having received this response, the Sacred Congregation wrote again: 'To the same Bishop, it is requested that, after further diligent inquiry, he report whether the Mass, about which prayers were made before the foundation of the year 1732, should have been applied [for the benefit of a soul] under any title, and that he transmit, as far as possible, the portions from the will of George Klerker, and from the will of Dietrich Henry Nehem from Gondhermühlen, in which legacies of 800 thalers were left.'

[*Latin ed. p. 663*]

APPLICATIONIS MISSAE 665. Episcopus respondit: "Testamentum Diterici Henrici de Nehem, multimodis inquisitionibus, non potuit inveniri." Quare, omnino nescio, cur, secundum testamentum de Nehem, de quo agitur, aliquid debeat determinari, vel aliquid supponendum sit. Alioquin, "Vicarius Klezker, in sua dispositione, nihil aliud videri

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intendit, nisi ut fundatio Nehem, scilicet Missa Rorate, iam tunc musicaliter celebranda et reapse musicaliter celebraretur, cum suo fundamento (800 thaleris), melius et optime, et inde quotannis 40 thaleris provenirent; et in hac re, prius mihi minus clara, aliquid corrigere oportet." Celebrans, pro quaelibet Missa (cantata), non nisi 10 grossos (lib. 1 §) ex fructibus legati percipit. Residuum Organistae (huic soli 20 florenthaleris), custodibus, Emonitori, iuvenibus et Choralibus attribuitur. Cur celebrans non nisi illud minimum percipiat, non potui comperire. Fortasse res ita ordinata est, ut Organistae reditus valde modicus aliquo modo augeatur. Hisce acceptis litteris, die 9 Januarii 1875, decretum editum fuit: "Per Summaria precum." Disceptatio gynoptica. Dubium, imo obscurum apparet, utrum onus applicationis a fundatore fuerit impositum, veluti ex tenore fundationis erueretur. Quamobrem, ad tramites iuris, tum civilis, tum canonici, contra fundatorem, interpretatio facienda videretur. Ita lex 45 ff. de regat, iuris "ibi" Contra eum, qui legem dicere potuit, apertius est interpretatio facienda. Idque eo vel fortius praesumendum foret, quia fundator illud oneris in testamento adiecit, ut quovis tempore matutino hora septima Missa celebraretur. Porro, Sancta Congregatio passim docuit applicationem haud fuisse demandatam, quando Missa fundata fuit cum onere celebrationis in Ecclesia, et hora determinata. Ita in Collen, applicationis Sacrificii, 17 Decembris 1679, lib. 40, decret. In Fricaseinen, applicationis Sacrificii, 18 Iulii, et 8 Augusti 1711, lib. decret, fol. 332.

[*Latin ed. p. 664*]

66. *APPI I VT! " V ! MISSAE et fol. 358.* And, finally, in Mantua, the application of the Sacrifice of the Mass was made on November 19, 1718. It does not present a difficulty that the Reverend Bishop has reported that, before the restitution of the Chapter, those to whom this office belonged had applied the Mass; for he adds that, after more diligent consideration, he believes that the application was not required from the foundation. Furthermore, if one considers the inadequacy of the recompense, for solemnly performing the said Sacrifice with singing, it could be said that the burden of application was not imposed. For the Bishop states that 10 grossi are not sufficient for a solemn Mass with application. However, on the other hand, these things seem to be worthy of consideration. The law 114 on the rules of law states: "In obscure cases, one usually considers what is more likely, or what is most commonly done." To this, the law of canons, chapter 45, on the rules of law, agrees. Moreover, it is more likely that he who founded the Mass and imposed the obligation of celebrating the Mass intended that the same Mass be applied to him. This justice and equity have been embraced by the Holy Congregation, as reported by Benedict XIV in *De Sacro F. Missae*, book 3, chapter 9, number 2. Therefore, since in the endowment of the Mass, the celebration is seen to have been required, as the tenor of the endowment indicates, the application, as if of its own accord, flows from

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it, and the burden of application seems to have been added. Even more so, since the practice, either constant or at least almost constant, of those who celebrated the Mass in question, seems to support this opinion. Indeed, the Bishop, questioned by the Sacred Congregation, responded on July 9, 1874: "Before the restitution of this Chapter, it seems that almost all those to whom the office, of which we are speaking, belonged, applied the 'Rorate' Mass, as I myself applied it for twenty-eight years." Therefore, from a careful consideration of these things, both the principle of presumption in a doubtful matter in the present question, and also the long-standing practice of those whose interests are involved, suggest the obligation of application in this case. To the one who asked the Sacred Congregation to request the Bishop himself to present authentic documents of the foundation of this Mass, if from them any argument could be derived.

[*Latin ed. p. 665*]

APPLICATIONIS MISSAE 665 concerning the force of presumption and the contrary fact, it is reported that – the testament of Diderici Henrici de Nehem, having been thoroughly investigated, could not be found. Therefore, I entirely do not know what, according to the testament of Nehem, should be decided or presumed in the matter at hand. If, therefore, certain documents are lacking to determine the matter, one must adhere to the general rule of the Holy Congregation, from which it is understood that the burden of applying the Mass falls upon the soul of the founder or institution. Indeed, it is more likely that he who imposed the burden of celebrating the Mass also intended that it be applied to himself. Nor does the inadequacy of the stipend added by that foundation present a difficulty, since it does not seem sufficient for the application itself, and for the greater expense that arises from the more solemn rite of the sung Mass. Since it can be said that this difficulty has only now appeared, when previously almost everyone seems to have applied this Mass, and I myself (the current Bishop reports) have applied it for 28 years? Furthermore, it can be added that, if necessary, it does not seem difficult to proceed to some increase in this stipend, since only twenty thalers and a half are reserved from this foundation for the organists, and only ten gross (lib. 1 *) are paid to the celebrating priest, while one thaler is equivalent to forty gross. And this all the more, since the Bishop testifies: I could not ascertain why the celebrating priest receives only that minimum. Therefore, it seems that the burden of application should entirely continue, and the Bishop should provide, as far as necessary, for an increase in the stipend of the celebrating priest, from the very revenues of the foundation in question. And if, as the Bishop clearly seems to indicate, someone has omitted the application, it would seem appropriate to prescribe to him a means of making amends for the deficiency. These matters briefly explained, the following points must

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be addressed.

[*Latin ed. p. 666*]

666. QUESTIONS REGARDING THE APPLICATION OF THE MASS. I. Whether the Mass should be applied in this case, and if so, to what extent. II. Whether and how provision should be made for past omissions in this case.

RESOLUTION. The Sacred Congregation, having carefully considered the matter, responded on May 22nd as follows: To 1. Affirmative. To 2. Affirmative, namely, for the granting of absolution, remission, etc., by fulfilling the obligation of celebrating the Mass with the Holy Sacrifice.

FROM WHICH WE MAY GATHER: I. That the Sacrifice of the Mass should be regularly applied for the benefit of the founder; although in the instrument of foundation or institution of the endowment, it may have simply ordered that a Mass be celebrated in a certain church. II. Therefore, it is not sufficient merely to celebrate the Mass, as the word "to celebrate" is commonly understood to mean the obligation of applying the Mass for the benefit of the pious founder, notwithstanding any observation to the contrary. III. From both law and the bond of friendship, it should be considered that, in obscure cases, that which is most likely or that which is commonly done should be observed; but nothing is more likely than that he who imposed the obligation of celebrating the Mass also intended that the benefit of the Mass should be applied to him. IV. However, the case should be excepted where the will of the founder, whether expressed or elicited from urgent conjectures, prefers something else; for example, if he requested that the Mass be celebrated for the benefit of the people, or of the nuns, or of some other confraternity. V. It is established by the constant practice, or at least by a practice that is almost constant, of those who have celebrated Masses, that the obligation of applying the Mass for the benefit of its founder was clearly understood.

[*Latin ed. p. 667*]

667. MARRIAGES. On May 22, 1875. Francis, a secular priest of the Diocese of O. in Brazil, and Secretary of that same Diocese, humbly approached the Sacred Congregation of Cardinals of the Diocese of Trent, to seek their opinion regarding the following case: "John and Theresa entered into a betrothal; and through the customary announcements, as prescribed by Trent, no impediment was found; but on the eve of the marriage celebration, Theresa presented an impediment before the parish priest of John, preventing that marriage, and John had previously known Theresa under a promise of marriage."

"The parish priest, T., made a written record of the impediment presented by Theresa, in the presence of witnesses; and he sent this record to the Episcopal curia, as required by the Diocesan Constitutions."

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"John and Theresa, having learned of the impediment, made new announcements, using different names, and again, no impediment was found. Then, having obtained the permission of the parish priest, they presented themselves before the priest Tertullian, who, after examining the parish priest's decree in writing, performed the marriage. Afterwards, John and Theresa publicly declared that they were the very couple whom Theresa had prevented from marrying, and they revealed the entire matter concerning the change of names; for they had contracted the marriage with changed names and surnames."

"Upon learning of this, the parish priest T. inquired of the Episcopal curia whether such a marriage was valid or not, alleging that he would not grant permission to the priest Tertullian to perform the said marriage, if he knew of the change of names of the contracting parties, especially since the Diocesan Constitutions prohibit the parish priest from celebrating the marriages of his parishioners, if an impediment arises and has been referred to the Episcopal curia."

[*Latin ed. p. 668*]

66S OF MARRIAGES: is presented, unless the Bishop or his General Vicar has granted a special permission to assist at the marriage, notwithstanding any impediment. Therefore, in our case, the parish priest does not allege any impediment due to clandestine marriage because of the lack of his license. The petitioner, however, humbly requested the Holy Congregation of the Council whether a marriage contracted in this manner is valid or not. Having received this document, the following was written: "To the Ordinary, who shall state the name and surname of the parish priest, and of those who dared to contract marriage under a false name; he shall transmit the delegation made by the parish priest, as well as the diocesan constitutions pertaining to the matter; he shall report how it was possible for the parish priest to be deceived by names and identities, when those who had already been known to the same parish priest should have been revealed through previous denunciations." In obedience to the mandates of the Holy Congregation of the Council, the Bishop reported the following: "I have diligently endeavored to fulfill the wishes of the Most Reverend Fathers of the Holy Congregation of Trent, as related in your letter dated December 25th of the past year, concerning the consultation made to the same Holy Congregation by the priest Francis M. regarding the validity of a certain marriage. I am ready to respond to your requests. The names and surnames of the spouses are: John Juares da Silva and Francisca das Thagas, the former born of a legitimate marriage to Joseph da Silva Juares and Florence de Virginibus; the latter, to Joseph Felice Barboza, and Lewis de Franca, legitimately born. Having received these denunciations with the names of the spouses and their ancestors, Lewis de Franca Duarte presented an impediment to the parish priest, alleging that John Juares da

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Silva had defiled his daughter, Miss de Franca Duarte; the parish priest, having accepted the impediment presented by Lewis, sent it in writing to the Episcopal Curia, according to the diocesan regulations. In the meantime, the same spouses made a new denunciation through another parish priest, having changed the names previously mentioned. The parish priest, having accepted...

[*Latin ed. p. 669*]

Regarding a matter brought to my attention by a certain Gundisalvo Vieira, a parishioner of mine, a man of proven integrity and without any suspicion, after the necessary announcements were made, and at the request of said Gundisalvo in the name of the couple, I granted the priest Tertulliano Joseph dos Santos the faculty to celebrate such a marriage. It is not irrelevant to note here that the parishes of this Diocese are almost all exceedingly extensive, and scarcely one or two priests, besides the parish priest, can be found in a single parish, hence it happens that parishioners often seek assistance from their own parish priest through another, due to the distance. The parish in question, however, extends fifteen or twenty leagues, and is one of the smaller ones. The deception on the part of the priest T. stemmed from his good faith, integrity, and high regard for Gundisalvo; nor did he suspect the trap that had been laid for him by the couple.

Explaining the case in this manner, the priest T. writes: "I believe that Tertulliano was not able to assist at the aforementioned marriage, because I only granted him the faculty to celebrate the marriage of the couple mentioned in the announcement, and not of those whose marriage was impeded." Thus, the priest T. also sent to the Sacred Congregation versions in the Portuguese language, namely, of the second announcement of the couple, in which different names are found, and of the faculty granted to the priest Tertulliano, and of the diocesan regulations pertaining to the matter; all of which are in agreement with the original.

OBSERVATIONS FROM THE OFFICE. Those arguments that favor the validity of this marriage. To no one does it seem doubtful that this marriage was valid. Indeed, if all the essential elements are present to constitute a contract, then that contract must be considered valid. However, in the marriage in question, the essential elements were lacking for it to be valid, hence Acta, Tom. VIII, fase. Z O V.

[*Latin ed. p. 670*]

670 The laws do not permit one to doubt the validity of marriages. It appears that the essential elements are present: if there was the consent of both parties, expressed externally, and if there was the solemnity of the presence of a priest, with the permission of the parish priest, then, according to the decrees of the Holy Council of Trent, Session 24, chapter

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1, marriages contracted otherwise than in the presence of the parish priest, or another priest, with the permission of the parish priest or of the Ordinary, and with two or three witnesses, are null and void. Therefore, when the essential elements are present in a case, the validity of the marriage seems to be clear. It has been observed that a marriage of this kind was celebrated with the permission of the parish priest, when an impediment already existed between the parties, and that this is strictly prohibited by diocesan law. Furthermore, it should be noted that the validity of this marriage cannot be called into question, even if it was prohibited by diocesan law under penalty of nullity. It is known that it is within the power of the Bishop to establish a new impediment, but it is solely the prerogative of the Roman Pontiff, as Sánchez de Matr. lib. 7 disp. i n. 9 and Pontius lib. 6 de matr. cap. i n. 12 demonstrate. Therefore, the Holy Congregation declared a marriage valid that was celebrated before a priest to whom the Bishop had generally forbidden to assist at marriages. This is also found in Sánchez and Benedict XIV, de Synod. Dioec. lib. 13 cap. 23. Furthermore, it does not matter if the parties fraudulently celebrated the marriage, under false names; although such fraud may have been used, it does not affect the contracting of the marriage, but rather the carrying out of the publications. It cannot be denied that the parties were present before the priest, and that they entered into the marriage without proclamations. Therefore, it seems that such malice and fraud were used only to avoid the publications; hence, the fraud did not directly affect the marriage. However, given and conceded, it directly affected the marriage, nothing can be taken away from its validity, because it is well known that...

[*Latin ed. p. 671*]

MATRIMONII 671. A marriage is valid, even if the parish priest is induced by deceit and fraud, provided that he understands everything. Thus, Giribaldus, Tractate X, on the Sacrament of Marriage, chapter 7, on clandestine consent, number 102. Cardinal, from Lucca, on marriage, discourse 6, number 4. Nothing can be inferred regarding the falsity of the names used by the contracting parties, because neither the Holy Canons nor the Council of Trent require the specification of the names of the contracting parties in granting a license, but only that marriages be celebrated before the proper parish priest, or another priest with the permission of that parish priest. Therefore, it suffices to have a simple license to assist at marriages in general, not only because, when the Council corrects ancient law, it should not extend to require such specification of names, as is reasoned in Sánchez, disputation 35, number 7, and 10; but also because the person of the parish priest is not required for this purpose to give consent, but only to be present so that the marriage may be known to the Church, as Sánchez, on Marriage, disputation 39, under number 1, 3, Rot. in recent. 124, number 124, number 16, and number 17, part 7; and in the Neapolitan marriage of March 13,

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1651, §, and therefore before the Most Reverend Cardinal Corrado. And this is truly the case. The purpose of the decree of the Holy Council was undoubtedly to have the marriage celebrated publicly before the Church, before the parish priest of one of the contracting parties, and with two witnesses, or before another presbyter with the permission of the parish priest or Ordinary. Therefore, since such a purpose is held by the conciliar decree, subtleties concerning the manner seem to be of little importance. And therefore, all the more so, because an error in the name does not vitiate the act, as is noted in the Code of Testaments. It does not seem to present a difficulty if it were to be subsumed that the license given by the parish priest was of no effect, and that the parish priest gave it for that reason, because he believed the contracting parties to be those whose names were found written in the publications, otherwise he would not have granted it; but such a difficulty easily disappears, 1. if it is noted that the parish priest simply and plainly granted that license, and therefore the priest validly assisted at the marriage; 2. if it is considered that the cause...

[*Latin ed. p. 672*]

672 The inquiry, or reason, demanded by the parish priest after the marriage, namely, whether permission has been granted, and if he knew that the contracting parties had assumed false names, is not final, but merely preliminary; and it ceases to be effective when the reason for it ceases, as many authorities state. Therefore, just as a marriage would be valid if the contracting parties had celebrated the marriage before the priest himself, even if they had used false names, so too it seems that it should be considered valid if the marriage was contracted before his representative. With these premises established, there seems to be no room for doubt regarding the validity of the marriage.

THINGS THAT INVALIDATE THIS TYPE OF MARRIAGE. On the other hand, it has been observed that the most holy Council of Trent decreed in Session 24, chapter 1, concerning reforms, that marriages are null and void if they are contracted otherwise than in the presence of a priest, or with the permission of the parish priest or ordinary. The marriage in question was contracted without the priest's permission; therefore, its nullity must manifestly be considered.

It cannot be asserted that permission was given by the priest in writing; indeed, such permission, even if given in writing, appears to be of no importance if it was given due to an error. Certainly, the priest gave permission to the priest to celebrate the marriage because he believed that the contracting parties were truly those whose names and surnames were read in the publications; and he certainly did not give permission, as appears from the records, if he knew that the contracting and parties were those for whom an impediment had been detected. Therefore, the permission given by the priest to the priest to celebrate the marriage arose from an error. However,

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the law states that consent given through error is of no force or effect, if, as Julian writes, those who err do not consent. For what is so contrary to consent as error? Therefore, since permission was given by the priest...

[*Latin ed. p. 673*]

Of Marriages, 675: If a dispensation has been granted for a reason that is subsequently found to be false, as if it arose from an error, it is as if it were spontaneously granted, and it is of no consequence, and it is as if it had not been granted at all. The truth of this becomes more and more evident when one considers the nature of intelligence and delegation. For delegation is an act of the will, by which power and jurisdiction are granted to another; therefore, it is impossible for such power to be transferred without the will of the one granting it; nor can a concession made in the name of one person be extended to another, because delegation is subject to strict law, and must be interpreted strictly. Concerning this, Cardinal de Luca, in his work *De Matrimonio*, book 1, number 7, says "there." Since delegation is an act of the will, by which the one granting it confers upon a private person that power or jurisdiction which he did not have, it follows that it is impossible for it to exist without the will of the one granting it, according to the general axiom that acts of the will cannot extend beyond what the will intends; and this is clearer from the particular nature of delegation, which is subject to strict law, and must be understood strictly according to the limits of the words. Therefore, a concession granted for one cause, or for one act, cannot be extended to another, nor can it be valid in the name of one person for another, as is further explained in general matters concerning judicial commissions or delegations, in their proper place, under the title *De Iudicibus*, and in more specific terms, in Dunois, *Disputationes*, 451. Considering these things, it appears that the delegation is invalid, since in the case in question, the pastor granted the priest the power to celebrate the marriages of those who were named in the announcement, but not of those whose marriages were impeded. Therefore, it seems that the marriage in this case must be declared null and void, as it was contracted clandestinely. Furthermore, this is confirmed by the fact that a falsehood occurred concerning the final cause; for the pastor, if he knew the truth, would in no way have granted permission; and the final cause is that which so moves the one granting the permission that he would not have granted it otherwise, as Bartolus says, book 2, § final, 1.

[*Latin ed. p. 674*]

674. Regarding the end of marriage, the authors of *de donat* and, in general, the Doctors and the Sacred Roman Rota teach this commonly. Furthermore, it is widely taught, among many others, by Tiraquel in *Tractatus de Causis Limitantium*, numbers 1 through 10, that a falsehood concerning the ultimate cause vitiates the very disposition itself. It must not be

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forgotten that a dispensation granted for a false reason is considered secretly and null, as noted in chapter *Quia de consanguinibus*, and by the Doctors there. However, a license in a case is a certain kind of dispensation, and it was granted for a false reason; therefore, it follows that it is null by its very nature. From all of this, it seems that the nullity of the marriage should be considered from the outset; otherwise, we would be indulging in the wickedness of men and opening the way to many inconveniences. With these and other points noted on both sides, it was the judgment of the Most Eminent Cardinals to resolve the following doubt: Does the marriage have nullity in this case?

RESOLUTION. The Sacred Congregation, after due consideration, on May 22, 1875, judged it fitting to respond: Affirmative.

FROM WHICH IT IS UNDERSTOOD:

I. It is undoubtedly the case that those marriages are considered null and void which are contracted otherwise than in the presence of a Parish Priest, or another Priest with the license of the Parish Priest or Ordinary, in those places where the Council of Trent has been promulgated.

(1) Cardinal De Luca, *Disputationes de Matrimonio*, 3, states as follows: "In the precise terms of this conciliar form of marriage, it is entirely truer, and beyond controversy, that this form is called the prescribed or solemn form, which does not admit of an equivalent substitute, so that if a marriage were celebrated in a public square, or otherwise before a large assembly of qualified men, without the intervention of the proper Parish Priest, or another with his license, it would not suffice, as Sánchez states in this treatise, book 3, dispute 37, number 4 and following, and many others."

[*Latin ed. p. 675*]

MATRIMONII 675 II. Quapropter, si pastor parochialis, ex quacunque causa, impediri videtur ad assistendum ad aliquid matrimonium, alius sacerdos ad illud delegari debet ab ipsius parochi vel ab Ordinario; et delegatio debet respectare tantum certas et determinatas personas contrahentium (1), ut actus potestatis delegatae efficax fiat, et non vitiatur ab errore. III. Naturam delegationis esse mutuam ab actu voluntatis, per quem delegans propriam potestatem vel iurisdictionem alicui tribuit: ideoque nullum eiusmodi actum perfici posse absque voluntate delegantis; quae certe deerunt si adsit error, quia non praesumitur consentire qui errat. IV. Delegationem esse, sua natura, stricti iuris; ideoque concessam ad unam causam, seu ad unum actum, non potest trahi ad alium, sive sub nomine unius personae pro diversa persona suffragari non potest. V. Nullum fieri delegationis actum si error vel falsitas contingat causam finalem, quae suapte natura ita disponens movet, ut si illa deficeret aliter omnino disponeret. (1) Cardinal. De Luca loc. cit. ita disserit: « Siquidem si licentia per ordinarium data (vel

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per parochum) cuilibet presbytero coniungendi in matrimonium Titium ita suffragari posset pro matrimonio contracto per SemproaiwB, resultaret, quod cum eadem licentia possent contrahi multa matrimonia inter diversas personas atque manifesta fraus fieri illi formae, quae cum adeo maturo iudicio inducta fuit per Sac. Concil. Trident, ad occurrendum inconvenientibus, quae ex matrimoniis clandestinis resultabant.»

[*Latin ed. p. 676*]

FROM THE HOLY CONGREGATION. The Congregation of Eminent and Most Reverend Cardinals of the Holy Roman Church, established by the Most Holy Pope Pius IX and the Holy Apostolic See to examine books of pernicious doctrine, and to order their condemnation, proscription, expurgation, or permission throughout the Christian Republic, having convened in the Apostolic Palace at the Vatican on the 25th of June, 1875, condemned and condemns, proscribes and proscribes, and orders that the following works be referred to the Index of Prohibited Books:

"Saggi di Psicologia e logica. — Saggio sulla natura. — Dante, il poeta del pensiero. — Saggio sulla filosofìa dello spirito. — Dell' immortalità dell' anima. — Opere della Marchesa Marianna Fiorenzi Waddington. — Firenze, le Monnier, 1864-1866-1867-1868."

"Il Papato ai tempi dell' Impero da Costantino a Giustiniano e il Papato ai tempi nostri con alcune note illustrative sulle leggi del 13 maggio e 19 giugno 1873. — Roma, Tip. Eredi Botta, 1874."

"Sulla prossima fine del mondo; ristretto dell' Opera dell' ultima persecuzione della Chiesa e della fine del mondo per D. Bernardino Negroni sacerdote regolare [alias P. Barnaba). — Bologna, società tipografica dei compositori, 1874."

"Trattato di Morale umana emancipata da ogni dogma e pregiudizio. Semplici letture ad uso del popolo che legge, intende e ragiona, per Aurelio Turcotti. — Vol. 2. presso Ermano Loescher in Roma, Torino, Firenze, 1875."

"Dürrschmitd: Die kloesterlichen Genossenschaften in Bayern, und die Aufgabe der Reichsgesetzgebung. — Nördingen, 1875. — In Latin: De Congregationibus religiosis in Bavaria et de ordinationibus circa eas a legislatione faciendis. — Neulingen, 1875."

This work is condemned according to Rule 11 of the Indexes.

[*Latin ed. p. 677*]

Friedrich: *De certamine, quod inter theologos Germanos et facultates theologicae in ultimis viginti annis* etc. — Bernae, 1875. — Latine: *De oppugnatione theologorum Germanicorum et facultatum theologicarum hisce ultimis viginti annis* etc. — Bernae, 1875. Opus condemnatus est secundum regulam II Indicis.

Auctor operis cui titulus: *Le mie preghiere per cura di M. Pietro Big-

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nami canonico onorario della Chiesa milanese.* — Milano, 1866. Prohibitum est decreto die 12 Aprilis 1867; auctor laudabiliter se subiecit et opus reprobavit.

Auctor operum quorum titulus: *I Gesuiti e la Republica di Venezia, documenti etc.*, primum editi, cum annotationibus, a Cavaliere Giuseppe Cappelletti Veneziano etc. — Venetiae, 1873. Et: *Breve corso di storia di Venezia condotta sino ai nostri giorni a facile istruzione popolare etc.*, ab eodem Cappelletti. — Venetiae, 1872. Prohibitum est decreto die 14 Iulii 1873, et die 5 Februarii 1874; auctor laudabiliter se subiecit et opera reprobavit.

Itaque nemo cuiuscumque gradus et conditionis praedicta opera damnata atque proscripta, quocumque loco, et quocumque idiomate, aut in posterum edere, aut edita legere vel retinere audeat, sed locorum Ordinariis, aut haereticae pravitatis Inquisitoribus ea tradere teneatur sub poenis in Indice librorum vetitorum indictis.

Quibus Sanctissimo Domino Nostro Pio Papae IX per me infrascriptum S. I. C. a Secretis relatis. Sanctitas Sua, Decretum probavit et promulgari praecepit. In quorum fidem etc.

Datum Romae die 2 Iulii 1875.

ANTONIUS CARD. DE LUCA, Praefectus.

Er. Hieronymus Pius Saccheri, Ord. Praed. S. Ind. Congregatio a Secretis, Loco Sigilli.

Die 2 Iulii 1875, ego infrascriptus magister Cursorum, testor supradictum Decretum affixum et publicatum fuisse in Urbe.

Philippus Ossani, Mag. Curs.

[*Latin ed. p. 678*]

678 FROM THE HOLY CONGREGATION OF INDULGENCES. Prayer for the Conversion of the Chamites of Central Africa to the Catholic Church. Let us pray also for the most miserable peoples of Central Africa, the Ethiopians, who constitute one-tenth of the entire human race, that Almighty God may finally remove the curse of Cham from their hearts, and grant them the blessing which is to be obtained only through Jesus Christ, our God and Lord. Prayer: O Lord Jesus Christ, the only Savior of the entire human race, who already reigns from sea to sea and from river to the ends of the earth; mercifully open your most holy heart even to the most miserable souls of the interior of Africa, who still sit in darkness and in the shadow of death, so that, with the help of the most pious Virgin Mary, your Immaculate Mother, and her most glorious Son, the blessed Joseph, the Ethiopians, abandoning idols, may prostrate themselves before you and be united with your Holy Church. Who lives and reigns, world without end. Amen. Vicar Apostolic of Central Africa. The Reverend Monsignor, the present Apostolic Vicar of Central Africa, humbly requested that the

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Most Holy Pope Pius IX would deign to approve the prayers mentioned above for the conversion of the Chamites, and to enrich them with plenary and partial Indulgences. Having been reported to the Holy Congregation of Rites, the aforementioned Holy Congregation...

[*Latin ed. p. 679*]

PRAYER 679. Having heard the opinion of the Most Reverend Dominicus Laurenti Salvati, his Assessor, it was approved to write to the Secretary, on the 27th of September, 1873. The aforementioned matters were faithfully reported to the Most Holy Lord by the undersigned Secretary, and His Holiness, having previously approved these prayers with His Apostolic authority, has decreed that the faithful of both sexes who shall recite them at least with a contrite heart, may obtain, for each time, an indulgence of three hundred days, according to the usual form of the Church; and that those who shall recite the same prayers at least once a day throughout the entire month, may obtain a plenary indulgence, provided that on some day of their choosing, they go to confession with true repentance, receive the Sacraments, and visit some church or public oratory, and there pray for a time, according to the intention of His Holiness. This decree is not subject to any impediment whatsoever. October 2nd, in the same year. D. BARTOLINI, Secretary of the Sacred Roman Congregation. The present Rescript was presented by the Sacred Congregation of Rites in the Secretariat of Indulgences on November 12th, 1873, according to the general Decree of this Congregation promulgated on April 14th, 1856. From the same Secretariat, this 12th of November, 1873. Dominicus Sarra, Substitute.

[*Latin ed. p. 680*]

FROM THE SACRED CONGREGATION OF RITES. The Most Reverend Father, the present Procurator General of the Order of the Carthusians, humbly petitioned the Sacred Congregation of Rites: Whether a priest who celebrates one Mass on the Nativity of Our Lord is obligated to read the Mass appropriate to the hour, namely, the first before dawn (by privilege); the second, if at dawn; the third, if he celebrates after dawn; or whether he must absolutely read the third, which is more fitting with the canonical Office, as is stated in some calendars, where it is written: "He who celebrates one Mass, shall read the third with the Gospel of the Epiphany *in fine*." The Sacred Congregation, having heard the report made by the undersigned Secretary, and having carefully and maturely considered the matter, decided to respond: "The priest who celebrates only one Mass shall read the Mass that corresponds approximately to the hour, according to the particular rubrics of that day." And thus it responded and ordered that it be observed. June 19, 1875. C. EPISCOPUS OSTIENSIS ET VELITERNUS. CARDINAL PATRIZI, SECRETARY OF THE SACRED CONGREGATION.

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(Seal)

[*Latin ed. p. 681*]

681 DECREE of Paris, or concerning the cult of the Confirmation, which has been diligently practiced from time immemorial, bestowed upon the Servant of God, Father Reynold, a Priest professed in the Order of Preachers, now called Blessed. In the Ordinary Assembly of the Congregation for Sacred Rites, convened at the Vatican on the date indicated, at the request of the Reverend Father Vincent Acquarone, a Priest professed and General Postulator for the Causes of Beatification and Canonization of the Servants of God of the Order of Preachers, by the Most Reverend and Most Eminent Cardinal Aloysius Oreglia of Saint Stephen, Promoter of this Cause, the following question was proposed: Whether the judgment of the delegated judge, issued by the Most Reverend Archbishop of Paris, should be confirmed in the case and for the purpose in question? The aforementioned Sacred Congregation, after mature deliberation and having heard the opinions both orally and in writing of the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, decided to respond: Affirmative. On July 3, 1875. These matters, faithfully reported by me, the undersigned Secretary, to the Most Holy Pope Pius IX, were ratified and confirmed by His Holiness. On the 8th day of the same month and year. C. EP. OSTIENSIS ET VELITERNUS. CARD. PATRIZI, S. R. C. PRAE*. Pia. Rolli, S. R. C., Secretary. DECREE concerning the Beatification and Canonization of the Venerable Servant of God, Father Simon Philippovich, a Priest professed in the Order of Friars Minor of the Observance of Saint Francis. On the twelfth day before the Kalends of March of the current year, when the Most Holy Pope Pius IX, benignly decreed that a Commission for the Introduction of the Cause of the Servant of God, Father Simon Philippovich, aforementioned, should be established in the Congregation.

[*Latin ed. p. 682*]

682. The Congregation for the Sacred Rites, without the intervention and opinion of the Consultors, has decreed that, even if less than ten years have elapsed since the presentation of the Ordinary's process, the Ordinary's documents in the Acts of the Congregation for the Sacred Rites, and the writings of the aforementioned Servant of God, which have not been searched for and examined, are to be considered. Most Reverend and Most Eminent Lord Cardinal Thomas Martinelli, promoter of this cause, at the request of the Reverend Father Brother Bernardinus of the Crypt, a priest of the Order of Friars Minor of the Observance, and General Postulator for the causes of beatification and canonization of the Servants of God, having considered the postulatory letters of several illustrious persons, particularly those of ecclesiastical dignity, who were gathered today at the Vatican in the Ordinary Sessions of the Congregation for the Sacred Rites, proposed

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the following question for discussion: Whether the Commission for the Introduction of this cause should be signed in this case and for this purpose? And the Sacred Congregation, after mature deliberation and having heard the voice and the written opinion of the Reverend Father Doctor Lawrence Salvati, Promoter of the Holy Faith, decided to respond: Affirmative, that is, the Commission should be signed, if it pleases the Most Holy [Father]. July 3, 1875. Subsequently, a faithful report of the above was made to the Most Holy Lord Pope Pius IX by the undersigned Secretary. His Holiness approved and confirmed the decision of the Sacred Congregation, and with his own hand signed the Commission for the Introduction of the cause of the Venerable Servant of God Simon Philippovich, aforementioned. August 8, of the same month and year.

O. EP. OSTIEN. ET VELITERN. CARD. PATRIZI S. R. C. PRAEF.

Ratti S. Loco fa Sigilli Piae. R. C. Secret.

[*Latin ed. p. 683*]

685 DECREE of Ferrara. Concerning the beatification and canonization of the Venerable Servant of God, Father Bonaventure Barberini, of the Order of Friars Minor of Saint Francis, Capuchin, Archbishop of Ferrara. Whereas, on the eve of the Kalends of April and on the eighth day before the Ides of the same month, in the year 1870, Our Most Holy Lord Pope Pius IX, benignly granted that the matter of the Doubt presented by the Commission for the Introduction of the Cause of the aforementioned Servant of God, Bonaventure Barberini, be considered in an Ordinary Congregation of Sacred Rites, without the intervention and vote of Consultees; and although less than ten years had elapsed since the presentation of the Ordinary Process in the Acts of the Congregation of Sacred Rites, and the writings of the same Servant of God had not been thoroughly investigated and examined, the undersigned Cardinal, Prefect of the same Sacred Congregation and Relator of the Cause, at the request of the Reverend Father, Father Amadeus, a priest of Orvieto, Professed, and General Postulator of the Causes of Beatification and Canonization of the Servants of God of the Order of Friars Minor of Saint Francis, Capuchin, having considered the Postulatory Letters of several men of distinction, especially in ecclesiastical dignity, and having convened the Ordinary Congregations of Sacred Rites at the Vatican on this day, proposed the following Doubt for discussion: Whether a Commission for the Introduction of this Cause should be signed, in this case and for this purpose? The Sacred Congregation itself, after mature deliberation and having heard the voice and writings of the Reverend Father, Dom Lawrence Salvati, Promoter of the Holy Faith, decided to respond: Affirmative, that is to say, the Commission should be signed, if

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it pleases the Most Holy [Pope]. On July 3, 1875. Subsequently, a faithful report of the above was made to Our Most Holy Lord Pope Pius IX by the undersigned Secretary. His Holiness approved and confirmed the judgment of the Sacred Congregation, and with his own hand signed the Commission for the Introduction of the Cause of the Venerable Servant of God, Bonaventure Barberini, aforementioned. On the 8th day of the same month and year. C. Ep. Ostien. et Velitern. CARD. PATRIZI, Prefect of the Sacred Congregation of Propaganda Fide. Rolli, Secretary of the Sacred Congregation.

[*Latin ed. p. 684*]

DECREE OF THE MONTIFELICIAN CONGREGATION CONCERNING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, FATHER PETER OF BALNEARIA, PRIEST, A MEMBER OF THE ORDER OF MINOR FRATERS OF SAINT FRANCIS, REFORMED.

In the cause of beatification and canonization of the aforementioned Venerable Servant of God, Peter of Balnearia, it was necessary to proceed in the Ordinary Congregation of Sacred Rites concerning the validity of all processes undertaken in said cause, at the request of the Reverend Father, Father Vincent of Vienna, a priest of the aforementioned Order, and General Postulator for the causes of beatification and canonization of the Servants of God of the Order of Minor Fraters of Saint Francis, Reformed;

The Eminent and Reverend Cardinal Thomas Martinelli, promoter of this cause, proposed the following doubt in the Ordinary Congregations of Sacred Rites held today in the Vatican: Whether it is established that the processes, both those of Apostolic and Ordinary authority, are valid; whether the witnesses have been examined properly and correctly, and whether the testimonies produced have been legitimately obtained and are pertinent to the matter under consideration?

Furthermore, the Eminent and Reverend Fathers entrusted with the safeguarding of the Sacred Rites, after a careful examination of all matters, and having heard the voice and written opinion of the Reverend Father, Lawrence Salvati, Promoter of the Holy Faith, deemed it necessary to write that a prior remedy exists due to the omission of the repetition of the third witness in the Ordinary Process. July 3, 1875.

The aforementioned matters were faithfully reported to the Most Holy Lord Pope Pius IX by the undersigned Secretary of the Sacred Rites Congregation, and His Holiness, having been petitioned for a remedy, benignly granted it, and deigned to ratify and confirm the judgment of the Sacred Congregation. August 8, of the same month and year.

C. Ep. Ostien. et Velitern.

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CARDINAL PATRIZI

S. R. C.
Prefect of Place
(Seal of the Congregation)
BALLI
S. R. C.
Secretary

[*Latin ed. p. 685*]

Apostolic Letters to the Bishop of Patti, PIUS P. IX.

Venerable Brother, Greetings and Apostolic Benediction.

Your letters have reached Us, in which You informed Us of Your arrival in this city, and of the joy, piety, and affection with which the clergy and the faithful welcomed their new Pastor. We were indeed comforted, Venerable Brother, seeing from Your letters how outstanding signs of devotion to their faith this flock entrusted to You have displayed on this occasion, and We give thanks to God, Who does not cease to strengthen and encourage the faith of His people, even in these times of great wickedness.

Since this is the case, and with God's help, We have great hope that Your arrival in this Diocese will ensure that Your flock will always be devoted to You, desiring nothing more than to faithfully walk with You on the path of truth and salvation, and We have no doubt that You will be increasingly inflamed with zeal to diligently fulfill Your pastoral ministry, and to promote the glory of God, the growth of religion, and the sanctification of souls with all Your efforts.

To this end, We do not fail, Venerable Brother, to earnestly implore the Lord to grant You the fullness of all blessings, and We likewise pray that He may generously pour forth the riches of His goodness upon the entire flock entrusted to You.

May this be a foretaste of all heavenly gifts, and a pledge of Our sincere affection. Apostolic Benediction, which We impart to You, to Your Chapter, to the clergy, and to the faithful, as You requested, in the Lord.

Given in Rome, at St. Peter's, on this 11th day of August, in the thirty-third year of Our Pontificate.

Acta, Tom. VIII, fasc. X.

[*Latin ed. p. 686*]

Apostolic Letters to the Bishop of Bovino. PIUS PP. To the Venerable Brother, Greetings and Apostolic Benediction. We have learned with sorrow, from your letters dated the twenty-ninth of June, that you have been forcibly removed from your episcopal residence, and that numerous examples of such violence have been observed in other dioceses of Italy. But

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while our sorrow was increased by the news you conveyed, it was a source of consolation to us to learn of your pastoral constancy, with which you endured the injury inflicted upon you, and of the noble protest you made, striving to defend the rights of the Church in every way possible. Indeed, the enemies of religion are now rejoicing in the easy victory they have achieved in oppressing the Church, which they perceive as defenseless; but a sad outcome awaits them, for the all-powerful hand of God cannot be escaped. We, who are under pressure in this world, will not be worthy of His grace if we, performing our office, patiently endure injuries. May this thought, which has uplifted your spirit (as we understand from your letters), also strengthen your constancy in these difficulties, in which you find yourself because of that sacrilegious usurpation. In the meantime, while we implore God to strengthen you with the support of His grace, and to fill your soul with holy joy, we impart to you, to your clergy, and to the faithful entrusted to your care, our apostolic blessing, as a pledge of divine benevolence. Given at Rome, near Saint Peter, on the twenty-eighth of July, in the thirty-third year of Our Pontificate.

[*Latin ed. p. 687*]

Apostolic Letters to the Bishop of Nérite. PIUS PP. IX. Venerable Brother, Greetings and Apostolic Benediction. Those matters which you brought to Our attention in your letters, dated June 16th, concerning the excellent demonstrations of piety and religion which your faithful flock has diligently offered during this Jubilee year, and continues to offer, have been a great source of consolation to Us. Indeed, from these, Our hope in God daily increases, as We firmly trust that His clemency will abundantly be bestowed upon this faithful people, who strive with greater constancy and fervor to implore it through holy works and diligent prayers. Therefore, We congratulate you, Venerable Brother, and those entrusted to your care, and while we give thanks to God for what you have signified to Us, We likewise earnestly pray that He may multiply His blessings upon you and all those under your guidance. Furthermore, We do not omit to express the sentiments of our grateful hearts, both for the wishes which you have offered to Us, and for the pious gifts which you have taken care to send to Us in the name of yourself and your flock. Finally, We wish to be a pledge of our sincere affection and of all blessings, and We impart to you, Venerable Brother, to the entire clergy, and to the faithful entrusted to your care, Our paternal Apostolic Benediction, in the Lord. Given at Rome, near St. Peter, on the 3rd of July, in the thirty-third year of Our Pontificate.

[*Latin ed. p. 688*]

LETTERS APOSTOLIC ADDRESSED TO BARON NICOLAUS TACCONE, FROM PIUS IX, POPE. Beloved son, Health and Apostolic Benediction. Recently, your letters, recalling the memory of Blessed

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Peter, reached Us, together with a manuscript of your work, in which you have reflected on Christian charity, and on that affection of the soul which the world calls philanthropy. The sentiments of religious piety which you expressed in your letter, and the outstanding zeal for the benefit of the Church of God, which you have clearly demonstrated in other works published by you, do not allow Us to doubt that you have pursued the argument you have undertaken so diligently, so that its reading will be pleasing to Us, and that we will find in it a new testimony of your talent and of your best intentions. In the meantime, we express our gratitude to you for the service of your offering, by which you wished to demonstrate your filial affection to Us, and to provide comfort, and we earnestly implore the abundance of heavenly graces for you and your family, as you request, and for their well-being, and as a pledge of our charity, we impart to you and yours, beloved son, our apostolic blessing. Given at Rome, near St. Peter's, on the 18th of August, in the thirty-third year of Our Pontificate. PIUS IX, POPE.

[*Latin ed. p. 689*]

From the Most Holy Congregation of the Council concerning Irregularities arising from Lack of Knowledge, dated February 27, 1875. The Bishop of B. S. S. reported to the Most Holy Office that the cleric L. had been promoted to the higher Orders of Subdiaconate and Diaconate by the Archbishop P., who at that time was also the Administrator of the Diocese of B. S. S. The Bishop stated that from the very beginning of his entry into the diocese, he had found the aforementioned L. to be of a weak mind and of such limited capacity that he considered it advisable, before conferring upon him the sacred Order of the Priesthood, to receive him into his Seminary and to commend him to a pious and wise Religious, who, as a guide and teacher, might devote himself to instructing him in those things which are necessary for every Priest to know. This was done in vain; for the aforementioned Religious, although endowed with all patience, derived no fruit from his repeated efforts, and, lest he waste his time further, dismissed him as being unsuitable for study; hence, L. was deemed irregular due to lack of knowledge and was denied the Order of the Priesthood, despite his pleas and the threats of his relatives. The Deacon L. bore this with a heavy heart; and, leaving his diocese, in which he could hope for nothing, he petitioned the neighboring Diocese of S., confident that there he would find a better fate. The Bishop of S. received his petition; but the local Ordinary opposed it, fearing that the Deacon, once received into the Order of the Priesthood, might later return to his homeland; for this reason, he refused to grant the necessary letters of excardination. The matter was therefore brought before the Most Holy Congregation of the Council, which, after considering all matters and having heard even the Archbishop P., who

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asserted that the cleric L. had been promoted to the higher Orders,

[*Latin ed. p. 690*]

600. Having, with due regard for the examiners appointed by the Pro-Synod, presented evidence of irregularities stemming from a lack of knowledge, the Bishop B. S. S. informed the Bishop of S. that he considered it proper to release the aforementioned Deacon from his diocese, in order that he might be incardinated in the diocese of S., but he stipulated that the Deacon should swear an oath beforehand, not to intend to return to and reside within the jurisdiction of his diocese afterwards. Furthermore, the Bishop of S. was advised not to raise the Deacon to the priesthood unless he obtained permission from the Sacred Congregation; in the meantime, he should admit the Deacon to the seminary, where he could devote himself diligently to his studies. After these events, the Bishop B. S. S. granted the Deacon L. permission to be incardinated in the diocese of S., which occurred in March of 1873. However, from that time onward, the Deacon repeatedly petitioned the Sacred Congregation, requesting that he be granted the faculty to receive the Order of Holy Priesthood. The Sacred Congregation, desiring to proceed cautiously in this matter, and even after receiving letters of recommendation from the aforementioned Bishop, decided to postpone the ordination several times, advising the Deacon to demonstrate greater progress in his studies and to devote himself more diligently to them in the meantime. Nevertheless, despite these responses from the Sacred Congregation, the Bishop himself intervened in the matter of the Deacon, sending several letters to the Congregation at different times. In these letters, he requested that the Deacon be ordained to the Sacred Priesthood, citing the following reasons: Firstly, that the Deacon had already completed 34 years of age; secondly, that he had presented a laudable testimony regarding his excellent morals and his diligent service in the Church, as well as some progress in learning moral and liturgical matters; thirdly, that he had been found suitable by two trustworthy ecclesiastics appointed by the Bishop to examine him, so that he might be raised to the Sacred Priesthood; and finally, that the diocese of S. so lacks priests that no more can be found who are able and willing to fulfill the burdens of parochial ministry, and that two parochial churches in that diocese have remained without a pastor for a long time. With these considerations in mind, on November 14...

[*Latin ed. p. 691*]

FROM THE DEFECT OF KNOWLEDGE 691. In the year 1874, a rescript was published concerning the Summary of Prayers; and the following observations have been made for and against. Among the many qualities required in clerics, so that they may properly receive the sacred Orders, it is not the least that they be sufficiently instructed in knowledge for each

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Order they receive; so that he who lacks due instruction is to be considered, by reason of the lack of knowledge, as unworthy. Indeed, he is excluded by natural and divine law from the ecclesiastical militia and ecclesiastical dignities; by natural law, because he is utterly unfit to perform that office which belongs to each Order; by divine law, because the lips of the priest must guard knowledge, so that the people may require the law from his mouth; to which corresponds that prophetic utterance in Hosea, chapter 4: "Because thou hast rejected knowledge, I will also reject thee, that thou shalt not serve as a priest to me." Therefore, it is not surprising that the Church has always been concerned about this matter, and has, with wise laws, excluded from the altar those clerics who show at least a lack of sufficient knowledge. Hence, Pope Gelasius, in Canon 1, Dist. 36, expressly states: "No one should presume to be promoted to the Order of the Clergy if he is unlearned, because, lacking knowledge, he cannot be fit for the sacred offices." To this, the Council of Trent, in Session 23, chapter 14, on Reform, adds: "Those who desire to be promoted to the Order of the Presbyterate must be carefully examined to see if they are suitable to teach the people those things which all must know for their salvation, and to administer the sacraments." And rightly so; for, among other reasons that could be given, the ignorance of one or the other is a disgrace to the entire clerical order. On the other hand, it is noted that the petition of the petitioner may be accepted, if it is considered that, in the entirety of the law, there is no expressly prescribed requirement of knowledge for those being promoted to Orders. For the Sacred Canons leave the examination of those to be ordained to the prudent judgment and conscience of the Ordinaries, who can rightly see, for the talents or qualities of those to be promoted, as well as for the special conditions of the places, and for the necessity or utility of the Church, that it will be more expedient in the Lord.

[*Latin ed. p. 692*]

692. IRREGULARITIES ARISING FROM LACK OF KNOWLEDGE. Hence, in Canon 5 of the Decrees, the Glossa notes that a moderate knowledge is sufficient for ordination; nor are the words cited above from the Council of Trent less general. Furthermore, Benedict XIII, in the Constitution which begins with "Supremo," urges bishops to admit to the priesthood only those who are at least competent in moral theology. Reiffenstiel, in his book 1, decrees, title II, page 3, number 67, states: "Since secular clergy are ordained to perform ecclesiastical functions, which indirectly contribute to the care of souls, they must have at least sufficient knowledge in order to fulfill these duties." To all of this, Cardinal de Luca, in his notes on the Council of Trent, Discourse XIV, number 28, adds: "Although in some places a certain lack of literature, at least in moral theology, or in matters of conscience, may be observed, this does not necessarily indicate a different practice in different places, or even due to

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a greater or lesser zeal and diligence on the part of the bishops. In those regions where the inhabitants are intelligent and studious, and where there is therefore an abundance of literature, a more careful and rigorous procedure is usually followed, so that the sacred Orders are conferred only upon those who are at least well versed in moral theology. In those places, however, where the inhabitants are naturally less intelligent or less studious, or in small and obscure places where there is no opportunity for study, a moderate and such knowledge as is considered sufficient is deemed a great accomplishment." However, it is established by the testimony of two ecclesiastics, who were specifically examiners, that the Orator had made such progress in the studies of moral theology that he was considered worthy to be raised to the Order of the Priesthood; which fact was confirmed by the testimony of the Bishop himself. Therefore, the Orator's petitions can be admitted. Moreover, it is not uncommon for those clerics who have at least attained sufficient knowledge to be promoted to the sacred Orders, provided that just causes are present; and it is known that this has happened more than once by the Sacred Congregation itself. Furthermore, greater leniency is usually shown to those who have already been promoted.

[*Latin ed. p. 693*]

OF IRREGULARITY ARISING FROM LACK OF KNOWLEDGE 695, both in similar cases and in those presently more serious. The best reason for this is given by Fagnano and Fargna on Canon Law, page 1, Canon 5, chapter 11, number 65: because otherwise, it is not known what the promoted one is doing, since he cannot minister, nor is it permissible for him to retreat. Having considered these things, the Most Reverend Fathers judged it necessary to write: Let it be decreed: I. No one shall be promoted to the Sacred Orders without a preliminary examination. II. Although this may not be the easiest thing, it should not be so light that a competent judgment regarding the knowledge necessary for the priest cannot be made from it. III. In those dioceses in which there is a scarcity of priests, it is indeed possible for bishops to act more leniently regarding the examination of those to be ordained, but not so that this is established as a rule. IV. Therefore, bishops who promote clerics to the Sacred Orders, those who have barely attained a mediocre level of knowledge, are to be condemned; and this generally, and without great necessity for the Church.

[*Latin ed. p. 694*]

(A REQUEST CONCERNING A PARISH. July 24, 1875. The Ordinary of the Diocese, in a report concerning the state of his Diocese, presented the following to the Sacred Congregation. "In the Parish of C., which has more than four hundred souls, there is only one priest, besides the Parish Priest,

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namely a chaplain, appointed to assist the Parish Priest, who is unable to adequately fulfill his duties in administering the Sacraments to the faithful, particularly Confessions, due to his deafness. It cannot be required of him to substitute for another priest in fulfilling this duty, given the meager income he receives, which barely reaches sixty scudi per year. The Parish Priest, on the other hand, enjoys a more substantial income from the entire Diocese; indeed, it amounts to three hundred scudi annually, etc. After presenting these facts and considering the circumstances, I request that the Eminent Fathers consider whether I can safely compel the Parish Priest of C. to add one priest to his staff at his own expense, at least on all feast days, to administer the Sacrament of Penance and perform other parochial duties, due to the increasing number of parishioners, for whom one Parish Priest proves to be insufficient, according to the Decree of the Council of Trent in Chapter 4, Session 21, concerning Reform. A brief discussion. It has been observed that a coadjutor should not be added to a parish at the parish priest's expense. This is evident from the text in Chapter concerning Privileges. Furthermore, the Ordinary cannot add new burdens to ecclesiastical benefices that were not imposed at the time of their original institution. This is consistent with what the Council of Trent states in Chapter 5, Session 25.)

[*Latin ed. p. 695*]

POSTULATUM CIRCA BENEFICIA ECCLESIASTICA 69-') de Bavaria. "Ibi" Ratio postulat, ut illis, quae bene constituta sunt, contrariis ordinationibus non detrahatur. Quando igitur ex beneficiorum quorumcumque erectione seu fundatione aut aliis constitutionibus, certa illis onera sunt iniuncta, in beneficiorum collatione, seu in quacumque alia dispositione eis non derogetur. Concinnunt Fagnanus in Cap. Conquerente de Cler. non resici, n. 12. Monacelli Vol. 2 Tit. 15 n. 29, cum loquutus fuisset de oneribus quibus beneficiatus subiacere debet, ait: "Caetera vero onera regulando et adimplenda erunt iuxta legem praescriptam in fundatione, quam Ordinarius alterare non potest, nec beneficia nova addere onera, etiamsi Patronus, sive Executor Testamentarius consensum daret; ut pluries respondit S. C. Congregatio." Si equidem Ordinarii B. preces humaniter exciperentur, onus omni ex parte novum Parocho adiiceretur, dum obligaretur ob id ad praestandam, propriis sumptibus, congruam Sacerdoti in locum Cappellani suffecto: quod neque iustitia, neque aequitas pati videtur. In iure praeterea scitum est Coadiutori ex reditibus Beneficii, in quod operam confert, alimenta praestanda fore, Azor. p. 2, i. 3 cap. 2 q. 9. Barbos, de Offic. Episc, alleg. 63 n. 15. Passerin. in c. un. h. t. in 6 num. 43. Compertum est etiam ex r., de Rectoribus c. tua nos c. nn. cit. "Ibi" De praelatorum, in quorum adiumentum auxilium sumtur, sumptus reipient modéralos. Quibus similia statuuntur in Concilio Tridentino Ses. 21 cap. 6 de Reformat. "Ibi" Episcopi etiam tamquam Apostolicae Sedis delegati eisdem

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(Rectoribus Ecclesiarum Parochialium) illitteratis et imperitis, si alias honestae vitae sint, Coadiutores aut Vicarios pro tempore deputare, partemque fructuum eidem pro sufficienti victu assignare, vel aliter providere possint, quacumque appellatione et exemptione remota. Nec immerito id statuitur quia legitur Matth. c. 10: "An operarius meretur cibum suum," simulque 1 Corinth. 9: "nemo cogitur militare s'ipendiis sui." Porro Sacerdos de quo in themate sermo fit, in beneficium gerentis Vices Curati, opus.

[*Latin ed. p. 696*]

The provided text does not contain any quotations from 1Sam 7:17. Therefore, no changes are required.

G96 Having received this position concerning his parish, he should consider the revenues of this benefice, and moreover, should strive to retain it, because it is a principle, justly received, that "he who enjoys the benefit, ought also to bear the burden." It is not without reason that the Bishop argues that it is not fitting to impose a burden upon a chaplain suffering from a hearing ailment, so that he may appoint a priest to assist him in performing parochial duties (which he himself is unable to fulfill), while enjoying a benefice whose revenues scarcely reach fifty scudi. Although this benefice may appear meager and small, especially considering the demands and hardships of the times, by which the sustenance of life has become more difficult due to the scarcity of provisions; it is nevertheless wrong to infer from this scarcity of the benefice that the vicar should be supported at the parish's expense, because this would be contrary to the sacred canons. Indeed, canon 1 of distinct 82 states that, as far as possible, the Bishop should take care of the coadjutor, even by conferring upon him another simple benefice, as the Council of Trent, Session 24, chapter 17, concerning reforms, indicates: "there." If this is not sufficient to honestly support the life of the person to whom it is conferred, another simple benefice should nevertheless be conferred upon him, provided that neither requires personal residence. Furthermore, if the Bishop is unable to provide anything from his own resources, the people themselves, by order of the Ordinary, can be compelled to provide what is necessary to the appointed coadjutor, according to canon. All Christians concerning consecration, distinct 1, and chapter 4 concerning the consecration of churches. And this is a just and proper thing; because to whom the emolument belongs, to him also belongs the burden, according to Rule 55 of the Juris, in 6, with concordances. And so write the Abbot in chapters concerning Rectors, numbers 5 and 6, Barbosa, number 4, Fagnanus, ibid., numbers 12 and 13, and many others. Therefore, the vicar should not be supported at the expense of the parish, even if the parish priest were richer than the rest of the diocese. This is because it would be detrimental to widows and the poor, for whom the parish priest is established by the sacred canons for protection and assistance, whenever the parish priest were to support a coadjutor at his own

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expense.

[*Latin ed. p. 697*]

697. Regarding the Parish: It is demonstrated that a Coadjutor should be added to the parish at the expense of the parish priest. However, the reasons presented by the Bishop have been deemed of such grave importance that they cannot be disregarded. For it is established by law that there is a cause for the parish priest to join a Coadjutor when the number of parishioners has increased to such an extent that one pastor is insufficient to perform the sacred duties. This is clearly indicated by the Council of Trent, Session 21, Chapter 4, on Reform: "Bishops, even as Delegates of the Apostolic See, in all parochial or baptismal churches, in which the people are so numerous that one pastor cannot suffice to administer the ecclesiastical sacraments and to perform divine worship, must compel pastors, or others to whom it pertains, to add as many priests as are necessary to administer the sacraments and to celebrate divine worship." And Cardinal de Luca, embellishing these words addressed to the Council of Trent, discourse 16, states: "When the population increases, or when, through the passage of time, the state of affairs changes to such an extent that one pastor or parish, or respectively one parochial church, is not sufficient or suitable for the entire population, then the Holy Council prudently provides in this decree that, according to the circumstances, the Ordinary should employ one of two remedies: either, namely, he should appoint vicars or assistants, and one or more assistant churches, without altering the unity of the parish and the parochial church, or, after a prior division of part of the population and territory, he should establish one or more parishes, as often as a suitable provision for all is practicable." Furthermore, besides the Doctors, there are examples of the Holy Council; if, indeed, a legitimate and just cause for adding a Coadjutor to the parish priest was the excessive number of parishioners, as is stated in Civit. Cast. of September 25, 1762, § 7, and in Tuscul. of June 8, 1765, § 9, the Ordinary may assume that such a cause exists, as stated above. Furthermore, it is established by law that a priest who has the care of souls, due to his infirmity, should...?

[*Latin ed. p. 698*]

69S It is fitting that a coadjutor or vicar be appointed to assist the parish priest, as stated in title "De Clericis Aegrotis" by Fagnan, in chapter "Coeterum de Rescriptis," number 75. And indeed, if the parish priest is not physically ill, he may nevertheless be burdened by a moral infirmity, as a bishop truthfully testifies: "and as I must confess, he does not enjoy good esteem among his flock." This infirmity, it is clear, renders him unfit to properly perform his pastoral duties. Therefore, just as a coadjutor is appointed to a parish priest who is physically ill, so that he may not be unable to care for his flock; so too, a coadjutor should be appointed to a parish

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priest who is morally infirm, according to the principle: "where the reason is the same, there the disposition of the law should be the same" (C. 11 ff. ad leg. Aquil. Leg. xi, Title "De Verbis Obligantibus"). Therefore, it is clear that a second vicar should be appointed to the parish priest. However, once this is accomplished, it is easy to determine that such a coadjutor should be supported by the parish expenses: and this is the teaching of the sacred canons, the Sacred Congregation of the Council, and the doctors of canon law (C. 2). Where, however, the matter of tithes is concerned, in § 6, the Sacred Congregation of the Council, in its decree "Coadiutoriae" of February 26, 1744, and the Rota Romana in Asculana, session of April 28, 1755, § 2, before the Most Eminent [Cardinal], state that a portion of the fruits belonging to the parish, in some way, should be assigned to this coadjutor for his sufficient sustenance; whether this portion is one-third of the revenues, as the Roman Sacred Rota stated in Daran, "Disputationes," 144, number 6, and Cardinal Falcan, "De Decimis," decision 9, number 19, or whether it is two gold coins each month, as the Sacred Congregation of the Council states in Orizi, "De Beneficiis Parochialibus," 9, chapter 2, number 15, and Barbosa, "De Officiis et Potestatibus Episcopi," allegation 60, number 2, at the end. The complaints of the parish priest regarding the honorarium to be provided to the coadjutor should not be considered; provided that it is established that the revenues of the parish reach 300 scudi each year; a sum which far exceeds the amount deemed appropriate by the sacred canons. The Council of Trent indeed granted the parish priest a sum of 100 scudi. And Saint Pius V, in his well-known constitution "Ad Exsequendum," ordered "that a portion be given to the priest..."

[*Latin ed. p. 699*]

REGARDING PARISHES: "It is decreed that to a parish, whether it numbers one hundred or more, or less than fifty, a sum be assigned, taking into account all emoluments and other customary revenues, certain or uncertain. This matter is to be regulated by the Sacred Congregation. It is desired that there be one hundred for the rector; which was established in the decree of the City of Cento, November 24, 1821, in question 2, and in the Assisi Congregation, July 21, 1827, §. Furthermore, with these considerations in mind, the Most Reverend Fathers have been granted the power to decide what should be answered to the petition of Bishop B. RESOLUTION. The Sacred Congregation, having knowledge of the matter, on July 24, 1875, judged that: In the case presented, the parish priest, and even more so, may be compelled. THEREFORE, THE FOLLOWING MAY BE GLEANED: I. Bishops, by right, as delegates of the Apostolic See, can appoint coadjutors, who, for the good of souls, can provide assistance in administering the sacraments, when the titular priest is hindered or unable to do so due to the increasing number of the faithful. II. It is undoubtedly the mind of the Most Holy Council of Trent that the coadjutor should receive a suitable

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portion of the Church's resources for his support, and that Bishops can also assign a portion of the fruits to coadjutors for their sufficient sustenance. III. It is also the opinion of the Doctors that the coadjutor should be supported from the revenues of the coadjutorship, whenever the revenues of the Church, or of the benefice, are abundant, or at least sufficient for the proper support of both the coadjutor and the coadjutorship (1). (1) It is a matter of controversy among the Doctors as to whom should be preferred when the revenues of the Church are not sufficient for both: the coadjutor, who actively provides service and is a worthy worker deserving of his wages; or the coadjutor who is prevented from doing so by illness or other impediment. Although another may have intervened, it seems that the opinion prevails that provision should first be made for the infirm or impeded coadjutor from the revenues of the Church. The reason is that the coadjutor, although impeded, since he must reside, always remains the rector of that Church, at least in law, if not in practice. Therefore, he must be supported from its revenues. Furthermore, since the coadjutor has the title and possession with the service of residence, he is to be preferred to a coadjutor who has neither title nor possession.

[*Latin ed. p. 700*]

700. POSTULATE CONCERNING THE PARISH. IV. The very nature of the matter and the rules of justice demand that the Auxiliary should live off the parish funds. For it is a principle accepted in law: "He who benefits should also bear the burden." V. The Council of Trent, and the Doctors, admit as a just and legitimate reason for a parish to take on one or more Auxiliaries, if the number of parishioners has increased to such an extent that the pastor, acting alone, is unable to adequately administer the Sacraments and celebrate the divine worship. "But this must not be a mere formality." If, otherwise, those who are sick or in some way hindered were to be deprived of their stipends, others would be deterred, and perhaps no one could be found willing to serve in the Church. However, if the income is sufficient only for the Auxiliary, the Bishop must provide for the pastor from elsewhere.

[*Latin ed. p. 701*]

Regarding the Mass for the People: On February 27, 1875, the Reverend Bishop V. presented the following petition to the Most Holy Prince, stating: "In the Diocese of V., there are not a few parish priests who are in charge of two distinct parishes. On Sundays and on feast days, they are required to celebrate Mass for the people in each parish."

"However, at times, these parish priests are unable to go to the second parish, either due to a sudden difficulty or because of inclement weather, or they may be unable to celebrate Mass, either in one parish or the other, due to a sudden or prolonged illness. And very often, there is no other priest

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available to take their place, for the number of priests is small, and they are not a little distant from one another."

"As for the suppressed feasts that fall during the week, which are not obligatory, but in which there is an obligation to apply the Mass for the people, the parish priests who are in charge of two parishes cannot, in such cases, celebrate two Masses, and it is very burdensome for them to celebrate two Masses, namely, one on the very day of the feast for one parish, and the other the day after or on another day for the second parish, applying those two Masses for the people."

"For in our diocese, the revenues are very meager. Many parish priests can barely support themselves, even by imposing many deprivations upon themselves."

"Therefore, Bishop V. requests a dispensation for a period of five years for the parish priests who are in charge of two parishes, and as mentioned above, to be dispensed from celebrating the second Mass for the people on Sundays or on obligatory feast days; and furthermore, to be dispensed from the second Mass for the people during the week on suppressed feasts, so that a single Mass may be applied for both parishes."

Acta, Vol. VIII, page X.OVI. 6

[*Latin ed. p. 702*]

702 APPROXIMATELY REGARDING MASS FOR THE PEOPLE: It is to be noted that several pastors of souls, governing two parishes, have up to now applied only one Mass for the people on feast days, on which days a second Mass should have been celebrated, even for the people of the other parish. Therefore, the aforementioned Bishop implores remission and absolution concerning the Masses not celebrated for the people of the second parish on feast days, and those which should have been celebrated during the week. Bishop V. hopes that these petitions will be favorably received, provided that similar favors were granted to the Bishop of Châlons on May 9, 1874, in the surrounding area.

OBSERVATIONS FROM THE OFFICE: By virtue of his office, it has been observed that all pastors and those actively engaged in the care of souls are bound by divine precept to offer the sacrifice of the new law for the flock entrusted to them. This is clearly taught by the Fathers of the Council of Trent, Session 22, chapter 1, concerning reform, so that the application of Mass for the people deserves to be considered among the pastoral duties which are incumbent upon the pastor, by reason of his office, as indicated by Innocent XII in the Constitution of April 24, 1699; and it must take place both on all Sundays, and on other more solemn feasts, according to the noted Constitution of Benedict XIV. Furthermore, all revenues, even if they are meager, of the parish, are always offered to the Holy See, as evidenced by the Sacred Congregation of the Council in Ferentino, on March 26, 1735.

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All of these things remain in force not only for those days which are still observed by the people, but also for feast days which have already been suppressed. As is well known, the Supreme Pontiffs who have freed the Christian people from the burden of attending Mass on those days, have not excused the pastors from the obligation of celebrating Mass for the people, as is evident from several declarations of the Sacred Congregation, from the Constitution of Benedict XIV, no. 7, and from the Encyclicals of May 8, 1858, of the Most Holy Fathers, whose beginning is the Most Beloved Redeemer, in which no new burden is imposed, but rather the old obligation is once again emphasized and declared to be absolutely observed, contrary to any custom, however ancient, or even venerable.

[*Latin ed. p. 703*]

Concerning the Mass for the People, 703, it can be effectively implemented, according to the decree of Pope Benedict XIV, no. 5. "Indeed, some are accustomed to allege that they do not have sufficient income from their parish to fulfill this obligation; others resort to long-standing custom, claiming that it has never been the practice, either for themselves or their predecessors, for a long time, which they assert is beyond memory. However, with respect to the preceding resolutions of this Congregation, we extend our approval and confirmation, and, as far as necessary, by the authority of the Apostolic See, we hereby decree and declare that, although pastors, or others as mentioned above, may lack sufficient income, and although an ancient or even long-forgotten custom may prevail in their dioceses or parishes, whereby the Mass for the People was not celebrated, nevertheless, it must nonetheless be celebrated entirely in the future by them. Therefore, pastors and all those who have care of souls are urged to fulfill this obligation, so that if they are in charge of two parishes, they are obliged to celebrate two Masses for the People, either by themselves, if they have the ability to do so, or through others, or on a different day of the week, if they lack that ability. However, only the case of two parishes united by a complete and extinguishing union is excepted; that is, when from two parishes, one completely ceases to exist due to the extinction of the other. And in the case of Lucen, on March 12, 1774, regarding the question "Whether pastors, who are in charge of two parochial churches, are obliged on Sundays and other feast days to celebrate the Mass in each church, either personally or through another, for the people," the following response was issued: affirmatively, except for parishes united by a complete and extinguishing union, and this should be written to the Bishop according to the instructions. And the instructions of the Sacred Congregation to the Bishop are as follows: that pastors are obliged to celebrate the aforementioned Mass for the People on each Sunday and feast day in each of the parochial churches, whether they are equally principal or subjectively joined and incorporated, since the celebration of

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only one Mass for the People is deemed sufficient."

[*Latin ed. p. 704*]

704. CONCERNING MASSES FOR THE PEOPLE, namely, those parochial masses which are so closely united and connected that, as it were, one has completely absorbed the other, so that the title of the other has been extinguished. Nor did the same Sacred Congregation respond otherwise in Oveteno, November 18, 1825, and in Cameraceno, September 25, 1858, in which it was asked: whether a parish priest who governs two parishes, and therefore celebrates twice in a day, is obliged to apply both masses to their respective parishes, notwithstanding the scarcity of income in the case? It responded affirmatively. Similarly, a similar response was given in Salamanca on February 22, 1822, and on March 21, 1863. However, on the other hand, the reasons presented by the Most Reverend Bishop in his suppliant petition appeared to be so weighty that his requests seemed deserving of a favorable reception. For with regard to those things which the Bishop primarily requests, namely, a dispensation from celebrating the Mass for the people on Sundays or holy days of precept for a period of five years; and also from the second Mass for the people in the week on holy days, so that a single Mass may be applied to both parishes, necessity itself seems to suggest this. Indeed, with regard to Sundays and holy days, the Bishop states that sometimes the parish priests cannot go to the second parish, either due to a sudden difficulty or due to inclement weather; or even because of illness, they may be unable to go to it or to celebrate there, nor can they celebrate in either parish; and it is often almost impossible to have it supplied by another priest, either because the number of priests is small, or because others are too far away from them. But in law, no one is obliged to do what is impossible. However, with regard to the holy days that occur during the week, which are not of precept, but in which there is an obligation to apply the Mass for the people, the Bishop adds that the parish priests govern two parishes and that it would be very burdensome for them to celebrate two Masses for the people, namely, one on the very holy day for one parish, and the other on another day for the second parish. Indeed, in the Diocese of V., the revenues are very meager, and many parish priests can barely support themselves. Furthermore, this last reason seems to be of such great importance that...

[*Latin ed. p. 705*]

CONCERNING THE MASS FOR THE PEOPLE (70th). It did not seem that the request made by the Bishop should be denied. For it is known that those who minister at the altar ought to live from the altar, and the mouth of the ox that treads the grain should not be closed. Hence, theologians and canonists commonly teach that the offerings for Masses were instituted so that provision might be made for the support of priests. It is sufficient

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to recall what the Angelic Doctor states in 2-2, question 10, article 2: For the priest does not receive money as a price for the consecration, but as a stipend for his support. Benedict XIV, in *De Synod. Dioec.*, book 5, chapter 8, agrees with this. And considering this, the Sacred Congregation granted, with just and legitimate reasons concurring, as is seen in the case of Catalaunen, on May 9, 1874, which has the greatest affinity with the present case. The scarcity of revenues seems to provide a just and valid reason for granting permission to celebrate, and to dispense with, Masses for the people of the second parish on feast days, which had not been celebrated previously, and which should have been celebrated during the week; otherwise, a serious loss would be incurred by the parish priests. Indeed, the Sacred Congregation has granted this favor on several occasions, as can be seen in the aforementioned case and in many others. Considering these and other matters, the judgment of the Most Holy Fathers was to consider whether the requests of the Bishop should be granted or not.

RESOLUTION. The Sacred Congregation, having considered the matter, on February 27, 1875, deemed it appropriate to respond as in the case of Catalaunen, on May 9, 1874; which reads as follows: Regarding the celebration of a Mass for the granting of absolution for the omissions mentioned, one Mass shall be celebrated by each parish priest. Regarding, however, the granting to the Bishop of the power to dispense, according to the requests made, and in the circumstances expressly stated therein, this is charged to the conscience of the Bishop himself for a period of five years, upon his giving his word to the Most Holy Congregation.

THEREFORE, IT IS UNDERSTOOD: I. The obligation of the parish priests, by divine precept, to offer a Mass for the people remains firm; so that if a priest presides over two parishes, he is obliged to offer two Masses.

[*Latin ed. p. 706*]

706. CONCERNING THE OFFERING OF MASS FOR THE PEOPLE, either by oneself, if one possesses the ability to say two Masses, or by another, or within the week. II. This obligation does not cease only for those days which are still observed by the people; but also for feast days, where the authority of the Pontiff has suppressed the celebration; and, although the Christian people are excused from hearing Mass on these days by the Supreme Pontiffs, the pastors of souls are not excused from the obligation of offering Mass for the people. III. This doctrine has been confirmed by numerous decrees of the Holy See, and by the authority of Pope Benedict XIV, who does not admit poverty of revenues, nor an established custom contrary to this, as an excuse for failing to fulfill this obligation (1). IV. It is also understood that the parish priest is not obligated to offer two Masses, but only one, if he presides over two parishes, which, however, are so united and connected that they are effectively one, with the extinction of the title of the other. V. He who, even in good faith, believing himself

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not to be obligated by such an obligation, or for some reasonable cause, has not offered two Masses for the two people to whom he ministers, must either offer the Masses which he omitted, or seek absolution from the Holy See for these past omissions. VI. Sometimes, the Holy See grants, at the request of the Ordinary of a place, the temporary faculty to dispense with the parish priest who governs two parishes, and who lacks the ability to say two Masses, so that he may offer only one Mass for both people. VII. However, such requests from Ordinaries are usually received favorably by the Holy See only if there are serious reasons that cause great difficulty for the parish priest in fulfilling this obligation. (1) The obligation of offering Mass for the souls entrusted to one's care has always been inherent in the office of pastors, by divine command, to such an extent that it is extended by some to Regular Canons, to Bishops, and even to the Supreme Pontiff. Indeed, Father Anthony Naldi, in *Summa*, Parochus, no. 19, says: "Truly, the parish priest is no more obligated by divine law for his flock than a Regular Canon for his subjects, a Bishop for his diocese, and even the Supreme Pontiff for the universal Church; and in these cases, it should be said proportionally, what is said of the parish priest."

[*Latin ed. p. 707*]

DECREE OF MANTUA. Whereas the Most Holy Pope, Our Lord Pius IX, having learned from certain reports that the Prelate Basil of Corridori, who possessed the Abbey of Nullius of Saint Barbara in the Diocese of Mantua, existing and immediately subject to the Holy See, has recently passed away from this life, and therefore the same is now vacant: desiring, moreover, that Holiness of His not to suffer any detriment from such a vacancy, and wishing to provide for it in a provisional manner, He has deemed it better to commend the same Abbey, for the time being, to the Most Reverend Bishop of Mantua, and to subject it to him, as is prescribed by the present decree, subjecting it to the good pleasure of the Holy See, together with the clergy attached to the same Abbey, and also with all the rights, privileges, and preeminences in any way pertaining to the Abbey and to the Abbot for the time being. Given at Rome, from the Secretariat of the Sacred Congregation, on the 4th of November, 1875. P. CARD. CATERINI, Prefect.

[*Latin ed. p. 708*]

708 FROM THE CONGREGATION OF BISHOPS AND REGULAR CANONS. On May 28, 1875. The Compendium states: "The Chapter of the Metropolitan Church consisted of four Dignitaries, fifteen Canons, Chaplains appointed to the Chapel of the Blessed Sacrament, and others who served the Chapter; all of whom, except for the Dignitaries and Canons, were removable at the will [of the superiors]." However, when Clement XI was elevated to the Papacy, and desiring to improve the decorum of that Metropolitan Church, the Bull *Super universas* was

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issued on July 6, 1714, establishing a College of seven Beneficiaries, who would be bound both by residence and by the daily performance of divine offices. "These seven [are] to be called perpetual simple ecclesiastical Benefices for seven future priests or clerics, drawn from the City or Diocese of [U.], and not from elsewhere." And all of these, together, shall constitute and form one College, with a common chest, table, and seal, and shall continuously reside and serve in the aforementioned Metropolitan Church, collegially performing the canonical hours and other divine offices, together with the Chapter and the aforementioned Canons, and in their manner... by our own initiative, and not at the instance of any petition presented to us on this matter, but solely out of our own liberality and the fullness of our Apostolic power, we perpetually erect and establish." "By the favor of these Beneficiaries, an annual pension of one hundred scudi is established, to last for all future times, which is to be paid to the Episcopal See, and to the Abbey of Saint Lawrence in [Cento], which were then vacant. These pensions..."

[*Latin ed. p. 709*]

The pensions, numbered 709, indistinctly affected all revenues, both certain and uncertain, both ordinary and extraordinary, of the Episcopal See and the Abbey; and they were to be paid without any delay, hesitation, etc. Furthermore, he wished that the pensions should always be paid in full: "always and at all times completely," and without any, even the smallest, diminution, and that they should not, "for any reason whatsoever, even legal, legitimate, pious, or privileged," be annulled, invalidated, reduced to a smaller sum, or have their payment delayed. All of these things were, indeed, sanctioned under the penalty of excommunication and interdict. For half a century, the pensions were paid punctually. However, on March 13, 1864, Daemanium extended its grasping hands to the assets of the Episcopal See. But because of the laws of 1866 and 1867, the assets of the Episcopal See underwent a conversion to state property, and the Abbey was suppressed; nevertheless, Daemanium continued to pay the pensions that it owed from these assets. However, the situation was different regarding the pension to be paid by the Episcopal See, for the Bishop, having no other revenues than those he received from certain movable goods, and from a certain sum that he had received from Daemanium for the purpose of liquidation, renewed the pension payment. Meanwhile, the Beneficiary of the city of U. sent letters to the Episcopal Curia dated July 13, 1868, in which he informed the Bishop that the Royal Treasury had paid the pension in full up to the second half of the year 1867; but he refused to pay it in the future, stating that it should be requested from the Royal Daemanium Administration; for this reason, they requested a written agreement for the payment of the first half of 1868, which had already been completed, and that he should take care to ensure that the remaining amounts would be

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paid in the future. But in a response from the Bishop dated September 18, it was stated that it was true that the Episcopal See was burdened with this obligation, but that the Bishop, given the extremely difficult circumstances in which he found himself, was not obliged to pay; however, he declared that he would pay the pension if he received the sum from Da-

[*Latin ed. p. 710*]

710 The humiliation of the pension demand had to be addressed. The beneficiaries appealed to the administrative authority, stating that the debt was "entirely unjust" and should not be paid unless it was duly registered; the governor, however, contradicted himself by demanding payment of the debt for goods received from the Abbey of Saint Lawrence, and also demanding payment of the pension owed to the episcopal court up to the year 1867. The registration of the mortgage did not affect the substance of the claim. The administrative authority must either pay or, if it fails to do so, bear the costs of the litigation. On September 9th, the administrative authority rejected the beneficiaries' request, stating that, according to the laws of July 7th and August 15th, 1867, only those obligations that were duly registered would be satisfied. And on August 18th, 1869, the beneficiaries were urged to appeal to the episcopal court, which could certainly pay them the sum owed, since the administrative authority had received thirty thousand livres from them for the purpose of collecting revenues. These matters had already been explained to the bishop; however, the beneficiaries had replied that they could give nothing; and that they should rather appeal to those who possessed the assets of the episcopal court. Nevertheless, they declared and decreed that the pension should be paid by the episcopal court. Since the beneficiaries could obtain nothing either from the episcopal court or from the administrative authority, they presented a petition to the Holy See, in which, after initially stating that 2398 livres were owed to them, either by the administrative authority or by the episcopal court, they added that they were being defrauded of half of the revenues of the benefices which they had obtained under the title of sacred patrimony; the other half, amounting to 13 livres, or more or less 65 livres, they were not receiving in full, but were, in addition to receiving nothing, forced to pay a tax to the government, called the "tax on movable property," as if they were actually receiving the pension. They considered it extremely unfair to bring the bishop before a secular tribunal (1); the administrative authority, on the other hand, could do nothing but in vain (1). For the reverence these beneficiaries showed to the bishop, even though he was not their own, they are to be commended. And may all imitate them! I know those who—

[*Latin ed. p. 711*]

71. He was summoned to court by himself, when the episcopal pension truly owed appeared; and the lawsuit would end, so that the episcopal

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pension would be compelled to be paid. Hence, he appealed to the Holy See, so that the Bishop might be urged to pay. The Holy Congregation, on February 22, 1872, wrote to the Archbishop of Urbis U., for information and a vote, after hearing the case; and it also wished to hear the Bishop of the city of S., the debtor; and also to hear the Bishop of S. regarding the prayers. He responded on April 7, 1872. "The procurator," he said, "valiantly insisted, and was finally able to obtain certain partial sums," with which "I could meet some of these pressing needs." However, it should be noted that "these partial sums were affected by special taxes, by which they were diminished, even in the very act of their delivery, and therefore I remain in a humble condition habitually." On the contrary, the Archbishop of U. expressed the opinion that the Bishop of S. should pay the entire sum: "It seems to me, in accordance with all justice, that the pension of the Benefice of this Metropolitanate should be paid in full, both for the time past and for the future, saving the aforementioned right of the pension to proceed, if and how, and against anyone, according to law." Furthermore, the Archbishop requested that the administrator of S. be absolved from excommunication, at least as a precaution. The Chapter of the Metropolitanate added to this opinion, spontaneously stating: "The administrator of S. has listed among the other liabilities even the scutage of Cento owed to the Benefice of U.; in no way is this a deficiency of means due to expenses for the cult; for the pension to be paid covers all other expenses, even those made for the Church or for the seminary." The response given by the procurator of S., namely that they should turn to those who possess the goods of the pension, is "utterly worthless," since the pension had been brought before the secular court, and the Bishops had been summoned for a few shillings! Alas! But men of the Church, who are so irreverent towards their Bishop, may they be stained only by this one fault!

[*Latin ed. p. 712*]

712 The "pension" affects not this or that particular fund of the table [of provisions], but all "fruits, revenues, produce, and emoluments, both certain and uncertain, ordinary and extraordinary, even those which come from the sacristry." With these facts in mind, the Sacred Congregation, through its secretary and relator, sent letters to the Bishop, urging him to grant something from the benefice, according to the Decree *Cum nuperrimis* (1) issued by the same Sacred Congregation, if the sums he was receiving from the benefice exceeded what he considered a fair amount, which the Council of Trent wished to be exempt from any pension; however, he would reserve the right to recover the sums paid if the benefice paid a pension. Since the beneficiaries stated that the sum the Bishop was to pay amounted to 37,353 florins, and that they had received nothing from the Bishop since 1869, they affirmed that 5,000 florins, or 2,687 florins, were due to them from December 27, 1872; they therefore requested that the

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Bishop pay 450 florins by June 1872, and then 50 florins semiannually, according to the Bull of Clement XI concerning all the churches of the world. The Sacred Congregation, having carefully considered the aforementioned Bull, warned the Bishop on December 18, 1872, that, due to the continuous requests of the beneficiaries, this matter should be discussed before the entire assembly of Most Eminent Fathers, according to the decree of January 28, 1871, and set a deadline of July 5, 1873, for the presentation of further claims, etc. Nevertheless, despite these measures, conciliatory proceedings were carried out until the beginning of 1875. And since the Sacred Congregation had sent a copy of the Decree *Cum nuperrimis*, and two doubts concerning the annual assessments of Bishops and Parishes for the year 1873, to the Curia, the general vicar of the Bishop of [Trent] applied the law to the case and, on June 1, 1874, issued letters to a benefice of this kind. The revenues of this benefice before the confiscation of goods amounted to 35,932.12 florins; the actual revenues amount to 12,418 florins. (1) This Decree is found in Volume 7 of this collection, page 125.

[*Latin ed. p. 713*]

713 pensions, after the submission of 5320 petitions concerning the variation of currency (1), the pension for the Beneficiate is reduced to 123.35 petitions. The Camerarius of the Beneficiates objected, both because the episcopal contribution was appropriate and sufficient to cover the entire pension, and because the decree *Cum nuperrimis* was not applicable in this case, since the pension represented a true ecclesiastical benefice. Finally, after many peaceful discussions, the Camerarius of the Beneficiates requested from the Most Reverend Bishop 2200 petitions, with which they could cover the necessary expenses and taxes, which were paid by the Bishop, preserving the rights of both parties. A summary of the dispute. However, since the question was not resolved, it was discussed with the Most Eminent Fathers, and the Defender of the Most Reverend Bishop presented the following arguments. Firstly, he argued that the issue was not whether the pension should be paid in full to the Beneficiate, but rather the reduction of the aforementioned pension to conform with the decree *Cum nuperrimis*; and this was proven both by the response given by the Sacred Congregation to the Most Reverend Bishop, namely that a certain sum could be given to the Beneficiate in the meantime, while preserving the appropriate episcopal contribution, proportionally, and in accordance with the decree *Cum nuperrimis*; and also by the letter sent by the same Sacred Congregation on April 2, 1874, which stated that the resolutions passed by the Most Eminent Fathers regarding the aforementioned decree should be followed, according to which the Most Reverend Bishop was obligated to provide for the pensions. From these points, he concluded that the issue was about the manner of applying the aforementioned decree in this case, and not whether it should be applied at all. Therefore, he

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reasoned as follows: The Roman Pontiff, Pope Pius IX, wishing to alleviate the burdens (1) that oppress Bishops and Parish Priests, the Sacred Congregation of Bishops and Regular Canons, on May 30, 1873, in response to a question: "Regarding pensions, are one thousand and two hundred ducats to be understood as a fixed or demonstrative sum?", answered: "Regarding the matter concerning the decree *Cum nuperrimis*, affirmatively for the first part, negatively for the second part." Therefore, the ducats mentioned in the Bull of Clement VI are not to be understood as ducats *aurea* (commonly called *di Camera*) of a value of approximately 9 petitions, but as Roman *scudi* of a value of 5 petitions.

[*Latin ed. p. 714*]

7. Regarding pensions, in order to consult concerning damages resulting from new *leges*, through the instrument of the Sacred Congregation of Bishops and the norms of His Holiness, it was established: that the loss or diminution of revenues of benefices should affect both beneficiaries and pensioners alike, without any distinction between the benefices themselves and the pensions, so that, in proportion to the diminution or loss of the aforementioned revenues, the pensions should also be diminished proportionally, or cease. However, it was desired that the full amount remain for an Episcopal or Parochial benefice. Therefore, the Holy See, considering only the diminution of revenues, decreed that such a diminution should affect both beneficiaries and pensioners; otherwise, it would not be possible to provide for the good of the beneficiaries, especially of Bishops and Parish Priests. Regarding the manner in which this decree should be applied, it is entirely necessary to adhere to the solution given to two doubts proposed on May 30, 1873, namely: 1. "Are the *Ducata centum et mille* to be understood in the pension decree *taxative*, or rather, *demonstrative*?" And, to the extent that the answer is affirmative to the first part, and negative to the second: 2. "And in what manner should pensions be paid from the revenues of parishes that exceed *Ducata centum*, and from the revenues of Episcopal sees that exceed *Ducata mille*?" To the first question: "Regarding the effect of which is spoken in the decree, the answer is affirmative to the first part, and negative to the second." To the second question: "Considering *mille* and respectively *centum*, the proportional reduction of pensions due to the diminution of the revenues of benefices, about which, in the aforementioned decree, is to be established, is to be made upon the remaining revenues of said benefices." From these, the *Collecter Ephemeridis Acta S. Sedis* deduced, among other things: "Therefore, even if there are cases in which pensioners, considered as associates of all the fruits, would receive the full pension, leaving the Titular a portion of 1000, or 100, it does not follow that they would have a right to such a pension, but only that the amount of such a pension should be proportionally diminished upon the remainder after 1000 or 100." But according to such a

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judgment, and the established proportion of revenues before and after the depletion of assets, then deducting the sum of *scutatorum m iii 3 o m 1 ra*.

[*Latin ed. p. 715*]

PENSIONS/SUMS of 715 scudi, or 5320 florins, entirely deducted from the Benefice, leaving the Beneficiary owing only a pension of 243.21 florins, as alleged. The Defender of the Beneficiary argued against the reasons presented by the Bishop, stating that the dowry of 100 scudi assigned to the Beneficiary was not a pension, but rather a perpetual ecclesiastical benefit, according to the Clementine decree *Super universas*, in which it is stipulated that the aforementioned dowry must be paid "without any, even the smallest, diminution... nor can it be annulled, invalidated, reduced to a smaller sum, or its payment delayed, for any reason whatsoever, even legal, legitimate, pious, or privileged."

Therefore, he argued, two questions must be resolved: first, whether the aforementioned pensions are included in the decree *Cum nuperrimis*; and second, if they are included, what criterion and measure should be applied. The first question concerns the substance, while the second concerns the manner, but the latter cannot be addressed until the former is resolved.

The legal expert affirmed that, according to the cited decree, a general rule is established that both the loss and the diminution of the revenues of benefices should be equally shared between the Beneficiary and the Pensioner. However, if such a rule were applied indiscriminately to Bishops and Parish Priests, there would be a danger that they would lose the appropriate amount assigned to them by the Council of Trent. Therefore, the decree was enacted to protect the rights of these individuals, ensuring that the dowry of 100 Roman scudi remained intact and complete for the Bishops, and 100 for the Parish Priests.

Therefore, if a comparison is made between the ancient and new revenues of the Bishop, and it appears that the dowry assigned by the Council of Trent remains intact and complete, and furthermore, that half of the revenues are above that dowry, who could ever deny that the aforementioned pensions must be paid by the Bishop, since they are not included in the decree *Cum nuperrimis*?

However, the Defender demonstrated that half of the revenues above the dowry were established for the Bishop due to the revenues of the Bishopric, both before and after the aforementioned deprivation. Furthermore, he added that the criterion for the division, which the decree *Cum nuperrimis* intends, should not be taken from a comparison of revenues.

[*Latin ed. p. 716*]

716 The present concern regarding pensions stems from the income de-

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rived from them, an income that was somewhat less before the most recent misappropriation; but a comparison must be made between the actual income and the income that existed at the time when the pension was established, namely, when the See of St. [Bulla] was burdened with it. Therefore, a comparison should be instituted between these two extreme points in time, since that imposition occurred in the year 1714. However, having overlooked such a question concerning the nature of the matter, the Defender of the Beneficiaries entirely denies that the *Decretum Cum nuperrimis* can be applied to pensions in this case. 1. Because, in Canon Law, a pension is always precarious, when it is imposed for a temporal reason in favor of some person, which excludes perpetuity: "Text. pars fructuum ad" time is not separated forever; Givan. de pens. q. 1. n. 1. Barbosa par. 3. Ius Eccl. univ. cap. 11. n. 3. Fagnan. in cap. Ad audientiam." Therefore, Canonists distinguish between perpetuity in the case of a benefice and a pension: "By this, a benefice differs essentially from a pension; a pension is not conferred perpetually, but only for the life of the person burdened, or at most, for the life of the pensioner, and upon his death, it ceases and is extinguished. On the contrary, it is the nature of an ecclesiastical benefice to endure perpetually once it has been legitimately established; therefore, upon the death of the holder, it is not extinguished, nor does it cease, but is said to be vacant until it is conferred upon another." Indeed, in the *Bulla Super universas* issued by Clement XI, it is explicitly stated that perpetual benefices, and not pensions, were established, for which a payment was to be made from the episcopal table. "We establish and institute perpetual simple ecclesiastical benefices, and for the dowry of these seven benefices thus established and instituted, we reserve, constitute, and assign one pension of Cento scudi from the episcopal table perpetually." Therefore, such an arrangement cannot be called a pension. This is further clarified by the fact that such a sum was to be paid by those who were bound to ecclesiastical duties: "By singing the canonical hours and divine offices, together with the Chapter and Canons, etc., and by celebrating them properly."

[*Latin ed. p. 717*]

717. Let it not be objected that such an obligation, instituted by a founder, is called by the name of "pension"; for the force is not in the name, when the thing itself is understood. And the Sacred Rota has observed that the word "pension" in similar cases should be understood broadly, and improperly. "It makes no difference," that the Most Holy Fathers have called them pensions; for from this, the nature of those things is not changed, since any obligation, taken in a broad sense, is called a pension. Decision 121, n. 1, p. 10, recent. Chapter Concerning Clerics, not residing, Fagnan, in chapter Ad Audientiam, concerning Rescripts, n. 42 to 45.

From these principles, the Defender argues: The Decree Cum nuperrimis refers to pensions, and not to the endowments of benefices; nor is the Bulla

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Super universas included in that decree.

2. Furthermore, the Defender maintained that the Decree Cum nuperrimis did not intend to include, perhaps could not have included, ecclesiastical benefices; it did not include them, because it spoke openly only of pensions, and wished to preserve ecclesiastical benefices; it could not have included them, because the perpetuity of receiving the endowment of benefices is established in the Canon of Holy Canons, Dist. 70.

3. But, even supposing, the Defender continued, that the cited Decree includes such permanent institutions, nevertheless, it would be excluded in this specific case. Since the reduction of obligations in favor of a third party must be derived from the will of the grantor, and if it is clear in no case, especially if the case was foreseen, that the grantor intended such a reduction, it will be manifest that this cannot take place, lest the authority of the grantor be denied, or the acquired right of the recipient be violated. Thus, the Sacred Rota of Rome judged that when the Pope, in the act of concession, made it clear that, because of the imposed pension, the congrua for the Episcopate, established by the Council of Trent, was not fully maintained, "A pension reserved upon the Episcopate, which does not amount to a thousand scudi, is valid," since it appears to be a derogation. Acta, Vol. VIII, page XCVI, 47.

[*Latin ed. p. 718*]

1. "Concerning pensions," the Council of Trent decreed; provided that it appears that the Pope has knowledge of the value [of the benefice]. Decree 90, page 9, paragraph 303, repeated. However, Clement certainly foresaw this case; nevertheless, he did not allow the pension to be diminished, when he wrote that it must be paid in full "in the face of plague, famine, war, drought, earthquake, and any other fortuitous and unexpected events, and whatever unusual circumstances may occur, and in cases where the necessity of law or of fact is entirely absent." Therefore, the pension must, in no way, be diminished, much less entirely abolished.

2. Furthermore, the Defender did not overlook the fact that, even with the encroachment of the Daemanial estate, the Episcopal table remains entitled to double the amount of the Congrua established by Trent; therefore, the Bishop cannot deny the pension without completely overturning the aforementioned Bull of Clement and the rights acquired from third parties.

3. Moreover, he pointed out that the decree *Cum nuperrimis* equally favors both the benefice and the pension; and that the obligation to pay such a pension in no way harms the Bishop. For, if the pension of 100 scudi had not existed, the Episcopal table would have received something more from the Daemanial estate; but it would have owed the Bishop a larger sum in various annual taxes, which would have constituted an annual sum of 46 scudi; so that the table would have received only 54 scudi annually, whereas, with the pension, the Episcopal table receives 100 scudi, free from

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any burden, since the taxes on the benefice, which would have amounted to 100 scudi, have been converted. From these facts, he concluded that the reduction of 26 scudi proposed by the Bishop should not be admitted; since the sum of 74 scudi would remain in his favor, the excess of which was not due to him.

4. Regarding the time at which the increase or decrease of revenue should be determined, it was found in the *Romana pensionis* of February 6, 1874, that this decree should be applied. Among those who defend the view that such a time should be calculated from the date of the grant, imposition, and reservation, De Rosa, in *De œecut. Litt. Apost.*, chapter 7, paragraph 20, is to be mentioned, who writes: "It must be noted that, in order to justify..."

[*Latin ed. p. 719*]

"The value of a pension," it is stated, "is maintained until the end of the pension, simply by reserving either a tax, or a benefit, or a vacancy; this suffices as justification for the time of grace and reservation." This, however, is more clearly expressed by Rigantius in *reg. 55, Can. n. 83*. Furthermore, the proof of the value must pertain to the prescribed "time of grace," as fully explained by Lotterius, etc. This, however, must be understood morally, that is, it must not pertain to a distant time." From these last words, the Most Eminent Fathers were to consider whether it would be appropriate to calculate the beneficial revenues from the time when the pensions were imposed; which, they readily admitted, would be very difficult to do. Moreover, they affirmed that, in many cases, after examining the nature of the pensions, the Sacred Congregation, through its Epistoles and Decreta, had decided that the Decree *Cum nuperrimis* should not be applied in the case, as in *Romana*, concerning the burdens and retentions of contributions, dated May 30 and September 26, 1873. And in *Romana*, or of the Minor Reformers, of February 6, 1874, regarding the doubtful question: "Whether and how the Decree *Cum nuperrimis* should be applied in this case?" although the matter concerned pensions, the answer was: "Considering the particular circumstances, negatively in all cases." And this was the answer given in other instances as well. Having considered these matters and the two proposed questions, namely: 1. "Whether and how the Decree *Cum nuperrimis* should be applied in this case?" and 2. "Whether, how, and from what time should there be a reduction of the sum of 532 florins assigned to the Beneficiated Church U in this case?" the Most Eminent Fathers considered it appropriate to respond on May 28, 1875. To 1. Considering the particular circumstances present in the case, the answer is negative. To 2. Provided for in the first.

[*Latin ed. p. 720*]

720. CONCERNING PENSIONS FROM WHICH READINGS ARE COL-

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LECTED. I. It is decreed that only those pensions which are properly so called are to be affected, and not those which partake of the nature of ecclesiastical benefices. II. Pensions and benefices differ greatly from each other: for a pension, by its very nature, is precarious, because it is granted for a temporal reason, in favor of some person; whereas a benefice, once legitimately established, endures perpetually. III. Therefore, a pension expires with the life of the person burdened thereby, or at most, with the life of the pensioner; whereas, on the contrary, a benefice, upon the death of the holder, does not cease, but becomes vacant until it is conferred again upon another. IV. The Episcopal and Parochial congrues established by the Council of Trent must be fully maintained. V. Therefore, if any pensions are to be paid by Bishops or Parish Priests, they must pay these above and beyond the congrues, maintaining a proportionate burden.

[*Latin ed. p. 721*]

721 From the Congregation of Sacred Rites, the Most Reverend Raphael Ammirante, Bishop of Nuceria Paganorum, has stated that in a certain collegiate church within his diocese, there is an obligation to celebrate certain Masses throughout the year, which are to be offered for the benefit of benefactors, and since these Masses do not have a fixed day, they are to be celebrated whenever it is permissible according to the liturgical norms. In these Masses, the Missa de beatis is sung, which is the customary Mass for daily use. However, since there have been many controversies regarding this Mass, the aforementioned Bishop has proposed the following questions to the Congregation of Sacred Rites for resolution:

Question I. Must three prayers be recited in this solemn Mass, as are found in the daily Masses, without any alteration?

Question II. Is it permissible, or indeed required, to change the second prayer, which is found among the various prayers after the daily Masses, marked as No. 11 or 12?

Question III. Should only this prayer, marked as No. 11 or 12, be recited?

Question IV. When these are the same daily Masses celebrated with singing, is the same rule to be observed when a Mass is celebrated for one deceased person, regarding the number and alteration of the second prayer?

Question V. When the anniversary of the death or burial of a deceased person is a privileged day, as are the days of the 3rd, 7th, or 30th day, can the name of the deceased be mentioned in the Mass celebrated solemnly on the anniversary day, as is done on the 3rd, 7th, and 30th days?

Question VI. When a funeral is celebrated with some solemnity, can the name of the deceased be mentioned in the daily Masses, when the second prayer is changed?

Question VII. Since the recitation of the Office of the Dead frequently

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precedes the celebration of the solemn Mass, can the name of the deceased be mentioned in the prayer...

[*Latin ed. p. 722*]

722 In the Mass for the Dead, which is celebrated annually, is the name of the deceased or deceased to be added? The Holy Congregation, after considering the following questions submitted by the Secretary, decided to respond as follows: Regarding I, II, and XII. In daily Masses for the Dead, which are solemnly sung, only one prayer should be said (except on the first day of the month and on Feria II), and only in the case where the prayer marked No. 11 or 12 is used, which is for multiple deceased persons; and the Decrees are found in the document of the Order of Friars Minor of the Observance of April 16, 1853, regarding XXII, and in the document of Briocen of August 12, 1854, regarding XI (\). Regarding IV. It is provided in the above response that the prayer should be appropriate for the person, or persons, for whom the Mass is being celebrated. Regarding V, VI, and VII. The prayers in which the letter "N" is not found, both in the Mass and in the Office, are found in the document of Viglevenen of April 7, 1832, and in the document of St. Mark of March 22, 1862 (2). And thus it responded and ordered that it be observed. June 19, 1875. C. The Bishop of Ostia and Velletri, Cardinal Patrizi, Prefect of the Sacred Congregation. Locum Fa Sigilli. Pia Rulli, Secretary of the Sacred Congregation. (1) Furthermore, in the opinion of some readers, the Mass for the Dead with singing for the soul to which the Sacred Congregation refers in the responses given above, which it designates as an act of charity, is not a daily Mass. "How often is the daily Mass for the Dead sung with a Deacon and Subdeacon, and is only one prayer to be said in it (except on the first day of the month and on Feria secunda), or is it also necessary to have the solemnity and external pomp, as Cavalieri explains, citing the Rubrics of the Missal, Title V, No. 3? " The Sacred Congregation responds affirmatively to the first part, and negatively to the second part. And in the document of St. Mark of April 16, 1853, in the document of the Order of Friars Minor of St. Francis of the Observance of March 22, 1862 (5318), regarding question 17: "When citing the prayers for the Dead, is it understood: 'God of Mercies, etc.' 'Bow down, O Lord, etc.,' can the name and title of the deceased be added above?" The Sacred Congregation responds negatively, saying: "Only one prayer should be said in..."

[*Latin ed. p. 723*]

725 DECREE OF BISINIANO. Concerning the Beatification and Canonization of the Venerable Servant of God, Brother Humilis of Bisignano, Lay Professed of the Reformed Order of Friars Minor of Saint Francis. CONCERNING THE QUESTION of whether and concerning which miracles there exists sufficient evidence in the case and to the effect of which we

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are speaking, in order to erect the lofty edifice of sanctity for the Venerable Servant of God, Humilis of Bisignano, who first laid the foundations of humility within himself, having assumed the name among the lay brethren of the Franciscan family of the Reformed. And indeed, the entire course of his life clearly demonstrates how fitting this name was for him. For he was the most faithful follower of the Holy Father Francis, and, according to the precepts of his Father, he embraced the most profound poverty, considering it the nourishment of humility and the root of all virtues, so that he constantly bore in his body the mortification of the Cross, through contempt for worldly things, the most grievous afflictions of the flesh, and the renunciation of himself. Thus, daily progressing in the practice of all virtues, he became more humble, and, walking in the flesh, he was elevated by heavenly graces. After, therefore, a rigorous examination concerning the virtues of the same Venerable Servant of God, the Most Holy Pope Pius VI solemnly declared them to be heroic, on the feast of Saint Francis, in the year 1780. Furthermore, with a Pontifical Decree, since divine testimony of miracles is required, the Promoter of the Cause proposed to the Sacred Congregation of Rites, for their judgment, two of those prodigious healings which, through the intercession of the Venerable Servant of God, were performed and which were recorded in the process. Concerning these, according to the Apostolic constitutions, a threefold examination was instituted: first, in the preparatory assembly in the house of the Most Reverend Cardinal Anthony Mary Panebianco, Major Relator of the Cause, on September 14th, in the year 1865; secondly, in the preparatory assemblies in the Apostolic Palace at the Vatican, on May 1st of the year 1870; and finally, in the General Congregation before His Holiness Pope Pius IX.

[*Latin ed. p. 724*]

On the first of June of the present year, in the Vatican Palace, the following decree was issued. In which, after the aforementioned Most Reverend Cardinal, the Relator, had proposed the question, "Concerning which miracles does it consist, and to what effect do they pertain?" the Most Reverend Cardinals entrusted with the safeguarding of the Sacred Rites, and the individual Consultor Fathers, each in turn, presented their votes. After these had been heard, the Most Holy Lord, before giving expression to the oracle of His mind, urged all to continually implore the aid of divine light in rendering such a grave judgment. Having finally implored the illumination of heavenly light, His Holiness decided to pronounce the supreme judgment this present Sunday, after Pentecost, dedicated to the Presentation of the Immaculate Virgin, and decreed that it was also fitting to proceed safely towards the Beatification of the Most Venerable Servant of God, Alphonsus de Orozco, and the Most Venerable Servant of God, Charles a Setia. Therefore, after having offered the unbloody Sacrifice most piously, he ordered the Most Reverend Cardinal Constantinus Patrizi, Bishop of Ostia

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and Velletri, Dean of the Sacred College, and Prefect of the Congregation of Sacred Rites, and the Most Reverend Cardinal Anthony Mary Panebianco, Major Penitentiary and Relator of the Cause, together with the Reverend Father Lawrence Salvati, Promoter of the Sacred Faith, and myself, the undersigned Secretary of the same Congregation, to be summoned to a more noble hall of the Vatican building, and in their presence, solemnly declared: "It is established that two proposed miracles consist in the third category, namely, the first, 'the instantaneous and perfect healing of the boy Joseph Panza from leprosy,' and the second, 'the instantaneous and perfect healing of Beatrice Lerra from a grievous infirmity laden with severe symptoms.'" This decree was ordered to be recorded in the acts of the Congregation of Sacred Rites, and to be made public on the eleventh day before the Kalends of December, in the year 1775.

(Signed)

THE BISHOP OF OSTIA AND VELLETRI.

CARDINAL PATRIZI, SECRETARY OF THE SACRED CONGREGATION.

PLACIDUS RALLIS, SECRETARY.

[*Latin ed. p. 725*]

72. DECREE CONCERNING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, FATHER ALPHONSUS DE OROZCO, PRIEST, OF THE ORDER OF ERMITES OF SAINT AUGUSTINE, PROVINCE OF SPAIN.

ON THE QUESTION OF WHETHER, WITH THE APPROVAL OF VIRTUES AND TWO MIRACLES, PROCEEDING TO THE BEATIFICATION OF THE VENERABLE SERVANT OF GOD IS POSSIBLE.

The Venerable Servant of God, Alphonsus de Orozco, a priest of the renowned Order of the Eremites of Saint Augustine, was, throughout all of Spain, in which he was born and lived, an example in word, in conversation, in charity, in faith, and in chastity, diligently attending to reading, exhortation, and doctrine. For he was tireless in the preaching of the Word of God, whether through his writings, through his counsel, or through his abundant charity towards the poor, having become all things to all men, that he might gain all to Christ. Therefore, his name was, among all his fellow citizens, especially in benediction: hence, concerning the excellence of the Christian virtues of the Venerable Servant of God, which the divine power itself testified by miracles, a case was brought before the Congregation of Sacred Rites, and after the most careful investigation, they were declared

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heroic by His Holiness Clement XII, in the vigil of the most blessed Virgin Mary's Assumption, in the year 1732.

After a long silence, unjustly caused by the passage of time, two miracles, obtained through the intercession of the Venerable Servant of God, were finally proposed, and after a thorough examination, they were solemnly approved by His Most Holy Father, Pope Pius IX, on the seventeenth day before the Kalends of December, in the year 1874.

Therefore, it is most fitting today to enroll the name of the Venerable Alphonsus among the Blessed, so that he who pleased God and was found just, may be a reconciliation for his people in these days of anger.

Wherefore, at the general assemblies held before His Most Holy Father, Pope Pius IX, in the Vatican Basilica, on the Kalends of June of the present year, the Most Reverend Cardinal Constantinus Patrizi, Bishop of Ostia and Velletri, Dean of the Sacred College, Prefect of the Congregation of Sacred Rites,

[*Latin ed. p. 726*]

726 The Relator of the Cause proposed the following question: "Can the process proceed safely, with the virtues and two miracles already approved, towards the Beatification of the Venerable Servant of God?" And all the Fathers gave their response, deciding that the Venerable Servant of God Alphonso De Orozco should be granted the highest honors. However, before the Most Holy Fathers could ratify their decision, considering the gravity of the matter, they decided to seek help from the Saint. Therefore, through repeated prayers offered with humility to God, the Most Holy Lord, our Pope Pius IX, on the last Sunday after Pentecost, which is the Feast of the Immaculate Conception of the Virgin Mary, after offering the Holy Sacrifice of the Eucharist with fervor, and in the presence of the Most Reverend Cardinal Constantino Patrizi, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation of Rites, and Relator of the Cause, and of the Reverend Father Lawrence Salvati, Promoter of the Faith, and myself, the undersigned Secretary, and others present, decreed: "That the process can proceed safely towards the Beatification of the Venerable Servant of God Alphonso de Orozco." This Decree was to be made public, recorded in the acts of the Sacred Rites, and Apostolic Letters, in the form of a Brief, for the solemn Beatification to be celebrated whenever desired in the Patriarchal Basilica of the Vatican, were to be issued. Eleventh day before December, in the year 1875. C. BISHOP OF OSTIA AND VELLETRI, CARDINAL PATRIZI, SECRETARY OF THE HOLY ROMAN CONGREGATION. [Seal] PLACIDUS RALLI, SECRETARY OF THE HOLY ROMAN CONGREGATION.

[*Latin ed. p. 727*]

727 SUMMARY OF THE ACTIONS CONTAINED IN THIS EIGHTH

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VOLUME, CONCERNING THE SOLEMN ACTS OF THE ROMAN PONTIFF. By the Divine Providence of Our Most Holy Lord Pope Pius IX, an Encyclical Letter to all Patriarchs, Primates, Archbishops, Bishops, and other Ordinary authorities who have communion with the Apostolic See, and to all the faithful (page 181). The Encyclical Letter of Pope Leo XII concerning the extension of the Jubilee to the entire Catholic flock. . . » 237 By the Divine Providence of Our Most Holy Lord Pope Pius IX, an Encyclical Letter to the Archbishops and Bishops of the Kingdom of Prussia. . . » 251 Apostolic Letters by which the President, for the time being, of the Republic of Peru is granted the right of patronage. » 365 Apostolic Letters of Our Most Holy Lord Pope Pius IX to the Bishops of the Swiss region. » 369 Apostolic Letters by which the Abbot, for the time being, of St. Peter of Solesmes is granted perpetually the use of the great cope and a place among the Consultors of the Congregation of Sacred Rites. » 375 By the Divine Providence of Our Most Holy Lord Pope Pius IX, a Letter to the Archbishop of Munich and Freising, in which certain works printed by the Reverend James Frohschammer, a doctor of philosophy at the Munich Academy, are condemned. » 429 Another Letter of the same Holy Pontiff to the same Archbishop, in which he speaks of a gathering held in Munich by certain theologians and learned Catholic men of Germany, concerning various matters pertaining especially to theological and philosophical disciplines. He mentions certain things to be avoided in the pursuit of knowledge and recommends that he communicate all these things to the individuals gathered at the same gathering. . . » 436 Another Letter of the same Holy Pontiff to Henry, Bishop of Breslau, in which he speaks of the doctrine of John B. Battzer, a Canon of the Church of Breslau, concerning human nature, a doctrine which he considers to be the same as that found in the writings of Gunther, and which has been prohibited. » 443 Another Letter to Cardinal de Geissel, Archbishop of Cologne, in which he speaks of various opinions and sentiments worthy of censure that are found in the works of the Reverend Anthony Gunther, prohibited by the Congregation of the Holy Office on January 8, 1857. ● ● . » 445

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SCUSA, concerning matters of great importance and pertaining to the subject under discussion, page 235, Naples (regarding the Beatification and Canonization of the Servant of God, Father Januarius Maria Sarnelli, a priest of the Congregation of the Most Holy Redeemer).

280, Decree of Prague, concerning the confirmation of the worship rendered from time immemorial to the Servant of God, Agnes, daughter of Premislav Ottocar, King of Bohemia, a nun of the Order of the Poor Clares, known as Blessed.

299, Decree of Nullius or Sublaquen, concerning the Beatification and Canonization of the Venerable Servant of God, Father Francis of Ghisone, a cleric of the Order of Friars Minor of the Observance of Saint Francis.

300, Decree of Corisopile, concerning the Beatification and Canonization of the Venerable Servant of God, Father Julian Maneri, a priest of the Society of Jesus.

304, Decree by which the entire world is consecrated to the Most Sacred Heart of Jesus.

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402, Decree concerning burials which are not more than three cubits distant from the altar.

405, Confirmation of the worship rendered from time immemorial to the Servant of God, Agnes, daughter of Premislav Ottocar, King of Bohemia, a nun of the Order of the Poor Clares, known as Blessed.

406, Rome, in which certain doubts are resolved by the Liturgical Academy established in the City, concerning the use of chalices whose cups are made of metal, and also concerning patens made of metal, used in administering the Eucharist to the faithful.

425, Naples, Decree by which the canonical rights of the Metropolitan Church of Naples are confirmed, allowing the Eminent Cardinal Archbishop to attend the conventual Mass.

489, Vercelli, or Trino, Confirmation of the worship rendered from time immemorial, Volume VIII, Part I, concerning the Servant of God, Octavian, of the Order of Cîteaux, abbot of the Monastery of Locedio, near Trino, in the Archdiocese of Vercelli, known as Blessed, page 11.

491, Ventimiglia, or Order of Preachers, Confirmation of the worship rendered from time immemorial to the Servant of God, Christopher of Milan, a member of the Order of Preachers, known as Blessed.

492, S.C. Response given to the Bishop of Lucerne concerning the Masses of Saint Nicholas.

620, Response of the Holy Congregation concerning the Masses of the Nativity of the Lord.

680, Paris, or Order of Preachers, Confirmation of the worship rendered from time immemorial to the Servant of God, Father Reginald, a priest of the Order of Preachers, known as Blessed.

681, Ripatransone, Beatification and Canonization of the Venerable Servant of God, Father Simon Philippovich, a priest of the Order of Friars Minor of the Observance of Saint Francis.

681, Ferrara, Beatification and Canonization of the Venerable Servant of God, Father Bonaventure Barberini, an Archbishop of Ferrara, of the Order of Friars Minor Capuchin.

683, Monfalcone, Beatification and Canonization of the Venerable Servant of God, Father Peter of Balnearia, a priest of the Order of Friars Minor of the Reform.

684, Nuceria of the Pagans, Doubts concerning the Mass for the Dead.

721, Bisignano, Beatification and Canonization of the Venerable Servant of God, Father Humilis of Bisignano, a lay brother of the Order of Friars Minor of the Reform.

723, Toledo, Beatification and Canonization of the Venerable Servant of God, Father Alphonsus of Orozco, a priest of the Order of Hermits of Saint

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Augustine, of the Spanish Province.

[*Latin ed. p. 734*]

INDEX GENERALIS CONCLUSIONUM QUAE IN PLERISQUE ACTIS IN HOC VOLUMINE RELATA ADNOTATAE SUNT, QUARUM MATERIA IN RESPECTIVIS ACTIS AMPLE EXPOSITA, VEL DECLARATA REPERITUR.

Eae autem conclusiones subsequentibus verbis comprehenduntur:

Administratio Sacramentorum.

Appellatio.

Applicatio Missae.

Canonicatus quoad dispensationem.

Erectio Cappellae.

Executor Testamentarius.

Fructus Beneficii.

Ius patronatus quoad Successionem.

Chorus quoad senitinm.

Ius patronatus (tionen) quoad Usurpatio.

Matrimonium, quoad impedimenta.

Coadiutores.

Alimenta parochiales quoad Confraternitates.

Congruae parochiales.

Conventio quoad consuetudinem.

Distributiones chorales.

Dhorlium.

Missa Conventualis.

Missa propopulo.

Oblationes quoad administrationem.

Oratorium publicum.

Electio quoad Praebendas canonicales.

Parochus quoad Eiectio.

Vicarius Capitularis.

Eleemosynae Missarum.

Paroeciae quoad confinia.

Pensiones.

Administratio ius funerandi.

Parochus quoad oeconomiam.

Sacramentorum.

Ius Sacramenta administrandi Episcopo infirmo, tum ei defunto funera

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persolvendi, Missam et Officium faciendi ad Canonicos pertinet, minime ad Parochum, pag. 210.

Canonici non possunt huic iuri renuntiare, tum quia inductum est ut consulatur dignitati et honori Episcoporum, tum quia sit lex universalis, a qua dispensare non potest nisi Summus Pontifex, ibid.

Ex officio sequuntur emolumenta? ideoque ad illos spectant qui ius habent persolvendi officia atque persolverint, ibid.

Statuta Caeremonialis Episcoporum vim legis habent, eaque ab omnibus sunt servanda, ibid.

Possessio praebendae canonicali.

Potentes quoad iuspatronatus.

Potestas delegata.

Praebenda poenitentialis quoad erectionem.

Praebenda Theologalis.

Praesentatio.

Professio religiosa.

Redditus parochiales.

Rescripta Summi Pontificis.

Sponsalia.

Statuta Capitularia.

Suspensio.

Testator suam quoad dispositionem.

Unio et dismembratio rum.

Utensilia sacra.

Ecclesia.

Appellatio.

Nemo appellare potest a definitiva sententia lata nisi infra tempus a iure constitutum, nempe antequam definitiva sententia transeat in rem iudicatam; dum ex regula iuris res iudicata pro veritate accipitur, pag. 613.

Sententia definitiva tunc regulariter ex iure transit in rem iudicatam, si infra decem dies a sua prolatione non appelletur ab ipsa, adeo ut postea ree tractari non possit, et contradicere volens non audiatur, pag. 614.

Sententia definitiva transit in rem iudicatam etiamsi debito tempore appellatum sit ab ea; postea tamen appellatio deserta fuerit.

Licet aliquando legitime insurgera contra rem iudicatam; haud temeraria, ibid.

[*Latin ed. p. 735*]

INDEX: Item, neque causa, sed alterutro dumtaxat in casu; vel si violata lex fuerit, vel nova et gravia monumenta demonstrent iudicantes deceptus fuisse in factorum adiunctis, ibid. Applicatio Missae. Sacrificium Missae

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est regulariter applicandum pro fundatore; quamvis in instrumento fundationis vel institutionis oneris Missae in quadam ecclesia simpliciter iussum fuerit Missam esse celebrandam, pag. 666. Proindeque non sufficit sola praesentia ad implendum celebrandi onus, dum verbum celebrare communiter accipi soleat ad significandum onus applicationis Missae peragendae favore pii fundatoris, nonobstante quacumque observantia in contrarium, ibid. Utroque iure, amico foedere, innui iur in obscuris inspiciendum esse, quod verisimilius sit, aut quod plerumque fieri solet; sed nihil verisimilius eum, qui onus imposuit celebrandi Missam, voluisse etiam sibi applicari eius fructum, ibid. Excipiendum tamen est, ex Doctoribus, casum quo aliud praeseferat voluntas fundatoris vel expressa vel ex urgentibus coniecturis elicita; ut puta si ille demandaverit celebrationem in commodum populi, vel monialium, vel confraternitatis alicuius, ibid. Canonicatus quoad dispensationem. Ad obtinendum canonicatum in collegiata Ecclesia sufficit aetas quatuordecim annorum, pag. 120. Vetita ac nulla reputatur a sacris canonibus praesentatio laici ad beneficium ecclesiasticum, nisi tempore a iure statuto habilis reddatur, sive iure ordinario, sive per dispensationem, ibid. Patroni laici possunt praesentare ad vacans beneficium actu incapacem de genere vocatorum, posthabito idoneo de ipsomet genere, dummodo infra terminum iuris habilis reddatur, vel dispensationem obtineat, ibid. Patronus potest seipsum praesentare ad beneficium per viam precum petendo nempe ab Ordinario ut sibi ex gratia beneficium conferat, secus praesentatio sui ipsius esset ipso iure nulla, pag. 121. Ignorantia legis fundationis in patrono non admittitur; proindeque, si quis contra ipsam praesentavit inhabilem, amittit pro illa vice ius praesentandi, nisi infra quadrimestre nominationem variaverit. Quadrimestri elapso patronis laicis ad praesentandum concesso, ac non nominato idoneo, ius ad superiorem devolvitur, ibid. Chorus quoad servitium. Nullus Canonicus eximitur a servitio chorali; dum ex Tridentino Concilio Sess. 24, cap. 12, de Reform., quivis praebenda tus debeat per se et non per alios divinum obire officium, cuius gratia beneficia ecclesiastica instituta fuere, pag. 334. Frustra adlaborat ad evincendam exemptionem ab eiusmodi onere legibus solemniter sancito, qui Apostolicum indultum, legitimum et vigens, haud quomodocumque praesumptum in sui favorem exhibere non possit, pag. 335. Consuetudo et observantia in contrarium haud alicui refragatur hac in re; eoquod potius reiiciendae sint tamquam abusus contra naturalem, legalemque beneficiati obligationem inductus; quique utpote disciplinae choralis corruptela numquam tractu temporis invalescere possit. Nullius esse roboris observantiam eiusmodi evincitur etiam e\ eo quod, ibid.

[*Latin ed. p. 736*]

7. INDEX GENERALIS. This is opposed by the laws of Trent, and therefore falls under the censure of Pius IV in *Principis Apostolorum*, accord-

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ing to which, as stated by Benedict XIV in *Inst. Eccl.* 60, v. 7, each of the aforementioned canons is considered together, and no custom is of any importance which contradicts the laws prescribed in those same canons, ibid. It is not permitted for Canons to be absent from the choir for more than three months, unless the constitutions of their churches require a longer period of service, page 452. Nor is it permitted for them to be absent from longer choral service, when, because of such service, they receive special distributions, which are assigned by the pious will of testators, ibid. Auxiliary Pastors. Bishops, by right, can appoint auxiliary pastors, as delegates of the Apostolic See, who, for the good of souls, can provide assistance to the titular pastor when the latter is hindered or overwhelmed due to the increasing number of the faithful, page 699. It is undoubtedly the opinion of all that the intention of the Holy Council of Trent was that the auxiliary pastor should receive a proportionate share of the resources of the parish for his support, and that the Bishops can also assign a portion of the fruits to the auxiliary pastors for their sufficient sustenance, ibid. It is also the opinion of Doctors that the auxiliary pastor should be included in the expenses of the parish, whenever the revenues of the parish or benefice are abundant, or at least sufficient for the proper support of both the pastor and the auxiliary pastor, ibid. The rule of reason and justice dictates that the auxiliary pastor should be supported by the parish: for it is a principle of law, "he who benefits should also bear the burden," page 700. It is the opinion of the Council of Trent, and is admitted by Doctors, that a just and legitimate reason for a pastor to take on one or more auxiliary pastors is the increasing number of parishioners, if, by themselves alone, they are insufficient to administer the sacraments and celebrate the divine worship, ibid. Confraternities. Every confraternity must be named according to its principal purpose, page 28. For the legitimate existence of confraternities, episcopal approval is necessary, ibid. No confraternity can be established in places where another confraternity of the same name and institution already exists, except for confraternities of the Most Holy Sacrament and Christian Doctrine, which can and should be established in each parish, even if another confraternity is already established there, ibid. In matters canonical and spiritual, civil authority has no power, ibid. Parish Stipends. For the proper support of the parish, according to the provisions of the Council of Trent, provision must be made through the union of benefices, or the assignment of tithes or first fruits, or through offerings and collections from the parishioners, or by some other more convenient means, page 102. The Holy See often provides assistance to a parish in need by reducing the number of Masses, where it is not possible to provide assistance by other means established by law, page 103. The stipend for Vicars Curate, established by law, is to be understood as one hundred scudi, not as a fixed

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sum, but as an indication, ibid.

[*Latin ed. p. 737*]

757 Immunity from the choir is granted to those who have completed sixty years of age, and for whom no consideration is given regarding the commendable choral service they have rendered; such immunity is not, by law, maintained, ibid. Distributions made among the present members are so distinct from daily and fixed distributions that they are generally given only to those present, either by a special statute or custom of any Church, or by the express will of benefactors, page 148. Absent members, whether excused for a just cause or by an apostolic dispensation, do not receive eventual and uncertain distributions, unless it is expressly stated otherwise, ibid. Absent members benefit from eventual and uncertain distributions as if they were present, unless the will of the testator or donor, or the canonical dispensation granted to canons actively engaged in the care of souls, or to canons celebrating Mass at the appointed time with the permission of the choirmaster, and for the benefit of the people, dictates otherwise, ibid. By the disposition of the law, only those who are present benefit from the increase, who, due to the absence of others, undertake a greater burden in the choir, ibid. However, physical presence is not required to benefit from this; a fictitious presence is sufficient, and therefore, absent members, due to a legitimate and canonical impediment, benefit from the increase, as well as from daily distributions and the negligence of others, ibid. Canons celebrating Mass at the appointed time are considered absent, and lose their daily distributions, unless the benefit of the people requires it, and the permission of the choirmaster is obtained, page 149. Distributions made among the present members are in all respects distinct from daily distributions.

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When it is a question of a suitable reduction, this must be determined by the judge, considering the circumstances of the place, the burdens of the benefice, the number of souls, the person of the rector, and also the price of provisions, ibid. Alms of Masses, which are called extraordinary, are not to be included in the calculation of a suitable reduction, ibid. Although daily distributions are to be included in the calculation of a suitable reduction for parish priests, as well as uncertain distributions, which are called certain, generally speaking, uncertain distributions are not to be included, unless the judge has declared otherwise, ibid. Agreement regarding custom. Agreements established by custom are to be observed, and according to the custom, which provides for the interpretation of the agreement, received from here and there, page 618. In matters concerning funerals, emoluments cannot be received from those offerings which a person or religious order

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provides through their own works for the deceased, page 619.

Choral Distributions. Canons and beneficiaries who are absent do not receive distributions, except those excused by infirmity or a just and reasonable bodily necessity, or by evident benefit to the Church, page 94. Canons and beneficiaries who are absent from residence, or who are absent from choral service during synodal vacations, do not receive daily distributions, but those present benefit from the increase, ibid. Such a law is of such strength that no contrary custom can be found, nor even a solemnly ratified chapter constitution, although strengthened by episcopal authority, ibid.

[*Latin ed. p. 738*]

738 INDEX (are distinct; and these are enumerated among the canonical fruits, page 1101. The canonical fruits granted by Indult, and the daily distributions granted, are understood to apply unless expressly excepted, ibid. Divorce. In cases concerning divorce (and the same is said regarding others in which the number of witnesses is not established by law), it is left to the judgment and conscience of the judge to determine the number of witnesses that he deems sufficient to reveal the truth, page 325. To obtain a divorce based on the grounds of adultery, either conclusive proofs are required, for example, a confession of adultery; or a suspicion so violent that it provides moral certainty of the adultery, ibid. If both spouses are adulterers, and neither has forgiven the adultery of the other, no divorce is granted, because there is a compensation; and this even if the adultery of one is concealed, page 326. Election regarding Canonical Benefices. The right of election can arise either from justice or from grace; in the former case, it pertains to the nature of true jurisdiction; in the latter, it only indicates the nature of the election, and can be revoked at the discretion of the grantor, as long as it is governed by interpretation, page 515. It is not necessary for the division of property in the Chapters to grant ecclesiastical benefits; for it is well known that a common fund exists in place of the benefices, ibid. The Canons and Benefices differ greatly: for by the former, the Canon elected acquires the right to do all things pertaining to Canons; whereas by the latter, he has the right, established and instituted, to use and enjoy the things and rights assigned to it, ibid. Election regarding the Capitular Vicar. There is no special form prescribed by law for electing a Capitular Vicar; nor did the Council of Trent itself establish it when it stated: "Within eight days after the death of the Bishop, the Chapter must absolutely appoint a Vicar, or confirm one already existing, who must at least be a Doctor or Licentiate in Canon Law, or otherwise, as far as possible, be suitable," page 401. In the election of a Capitular Vicar, it is sufficient if the majority of the electors present consent to his election, in whatever way this is done, whether in writing or orally; provided that it concerns a simple appointment, which is done by mandate, and which does not require any other act for its perfection, ibid. It is not necessarily required to follow the

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form in Chapter 42, Concerning Elections, nor the Decrees of the Council of Trent, Session 25, Canon 6, as some believe; because in the former, it is a matter of electing Prelates who obtain principal and perpetual jurisdiction, while Capitular Vicars are temporary and momentary; and in the latter, it concerns the election of Regular Superiors, ibid. Alms of Masses. The alms of Masses, which are received by priests, were introduced into the Church for the purpose of supplementing their support, page 73. The general decrees of the Holy Congregation of the Council, confirmed by Urban VIII and Innocent XII, by which the excess of alms of Masses is prohibited, are to be understood as pertaining to manual Masses, page 74.

[*Latin ed. p. 739*]

INDEX I Concerning the obligation of giving the entire stipend, retaining nothing for oneself, the following are excepted: Chaplains with benefices and Parish Priests, in those Masses which they are obligated to say by the terms of their benefices, ibid. If Parish Priests solicit appropriate alms for extraordinary Masses, they are released from the obligation of giving the entire stipend, retaining nothing for themselves, ibid. Parish Priests, Chaplains, and those with benefices, with regard to the Masses which they are obligated to say by the terms of their benefices, may, with the best of right, entrust the celebration of said Masses to another Priest, if they themselves are unable to perform them, provided that the alms ordinarily due to the place are given to him, whether for Masses said, or sung, while retaining a larger salary for themselves, ibid. Those who, in virtue of an Apostolic Constitution, collect alms of greater value for Masses, and derive profit from them, by celebrating them in places where the stipends for Masses are usually of lesser value, incur the greater excommunication, reserved to the Roman Pontiff, by such action, whether they are laymen or clerics, ibid. The title to receive the alms arises from the obligation to celebrate the Mass, and is transferred to the celebrant, page 84. If an excess of alms is given for reasons other than the Mass itself, that is, for extrinsic reasons, it does not prevent the Mass from being entrusted to another Priest, provided that only the ordinary alms are given to him, ibid. Extrinsic titles (by which it is permitted to retain a larger portion of the stipend for oneself) are not only found in those who, by reason of a benefice or prebend, are burdened with the obligation of Masses, but also in Parish Priests, provided that the rights of the stall concur, ibid. Moreover, not only Parish Priests, those with benefices, and those with prebends, but also all other Priests are exempt from the obligation of returning the stipend of Masses, if it is morally certain that the excess was given to them with the intention of benefiting a particular person, ibid. Any arrangement concerning alms for Masses must be made with the intention of the donors, page 660. Whenever a translation, postponement, or conversion of a part of the alms exceeding the customary amount to pious uses appears to be opportune and useful,

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the donors must be informed of such changes, ibid. All those who, with their own good will, but in good faith, have acted otherwise, should seek absolution for the past and healing, ibid. Clerics to whom alms for Masses are given by a faithful person, and who intend to use them for good books or religious publications, act illicitly if they give books or publications to those who have given alms with the alms retained, ibid. Conversely, it is permissible for Priests celebrating Masses entrusted to them to accept religious books and publications in lieu of the stipend, ibid. It is permitted for the moderators or administrators of periodicals to follow the same course, provided that it does not go against the will of the founders or donors, excluding any diligent collection for Masses, ibid. The postponement of the celebration must never exceed six months, ibid. Erection of a Chapel. In the same church, it is forbidden to erect a chapel or altar in honor of a saint to whom another is already erected, page 124.

[*Latin ed. p. 740*]

740 GENERAL INDEX. It is not prohibited that more chapels be erected in honor of the Blessed Virgin Mary and of Our Lord Jesus Christ, under different titles, ibid. Executor of a Will. The power of the executor of a will ceases as soon as he has fulfilled the will of the testator; nor does it continue because the testator appointed a parish priest as his executor for a time, page. Fruits of a Benefice. It is not sufficient for someone to have obtained a benefice in order to receive its fruits and to dispose of them; it is also required that he acquire possession of it, page 22. The fruits of any prebend or benefice do not accrue except from the day of the acquisition of possession, ibid. Fruits received by a beneficiary before he has acquired actual possession must be restored, ibid. Right of Patronage concerning usurpation. The Council of Trent, Session 25, Chapter 9, on Reforms, expressly revoked all rights of patronage acquired by usurpation or custom, page 9. In order to prove the right of patronage, where the presumption of usurpation arises, fuller and more exact proof is required, according to the prescription of the same Council, ibid. The right of patronage in the case of powerful individuals, or others suspected of usurpation, and where the foundation or institution is not known, must be proven for an unforgettable time, together with continuous presentations, and the effect of the drawing of lots, for at least fifty years, page 10. A conciliar decree, without the aforementioned strict form, affects the right of powerful individuals, and it also affects it in the case of those in possession, ibid. Right of Patronage concerning succession. The opinions or theories of canonists, or the presumption of the law, are not valid, as long as it is clear and expressly stated what the will of the testator was, page 349. The will of the testator must be observed piously and religiously, to the extent that it admits or excludes certain persons from succession in the right of patronage, ibid. The same theory of Ancharani (1) does not apply, which teaches that the

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right of patronage is transmitted to the heirs, both by will and by intestacy, from the last of the family or lineage, and therefore becomes hereditary, when the will of the testator is openly opposed, ibid. There are two ways to determine who should succeed in the right of patronage, both actively and passively; namely, through the documents of the foundation, if they exist; if they do not exist, then through arguments that are equivalent, page 468. Canonists agree that the right of patronage can be transmitted to others by donation, provided that the consent of the Ordinary is not lacking, ibid. (1) It should be noted here that, by a typographical error, the words "u in casu" were omitted in the first part of Corolla I, page 349, so that the correct wording is "ä. C. Congr. did not admit the theory of Ancharani in this case." It is known that such a theory has been accepted in some forums, and that the same Sacred Congregation did not reject it. Therefore, if it was not applied in the aforementioned case, it is believed that this was because the will of the testator was clearly opposed; while the will of pious testators is religiously observed in the Sacred Congregations.

[*Latin ed. p. 741*]

INDEX GENERALIS: Regarding the right of patronage over a benefice, an argument can also be drawn from facts; for example, if, from a remote time, the administration of that benefice has been granted to someone by a papal indult; while, in practice, such a privilege is usually granted only to certain patrons, ibid. Two things are essentially required to establish an ecclesiastical benefice: namely, that there must be an Episcopal decree for its canonical erection; and, in the collation, that canonical institution bulls must be issued, ibid. Marriage, with regard to impediments. It is sufficient for hindering a marriage if a rumor of some impediment existing is brought to the attention of the Episcopal Curia or the Parish Priest, page 221. In a legal inquiry, it must be certain that the impediment exists; documents and witnesses must be examined according to legitimate rules of criticism; and if it cannot be established that the impediment exists, the marriage must not be hindered, ibid. Pure reverential fear, by itself, does not invalidate a marriage; it does invalidate it, however, if it is accompanied by such circumstances that the freedom of the contracting parties is impaired, page 593. However, in the external forum, conclusive proofs are required before a marriage can be declared invalid by the judgment of the Church, ibid. It is certain that the Council of Trent declared marriages contracted with the impediment of affinity of the first and second degree to be null and void; so that if anyone has contracted a marriage with this same impediment, and has even consummated it, they should do nothing to secure the validity of the bond, but should be completely separated, page 642, 741. Although, according to law, marriages contracted with the aforementioned impediment are null and void; because law arises from facts, it must be legally proven by the spouses (if they wish to dissolve the marriage) that they

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actually had the impediment before the celebration of such a marriage; so that the Church will not deny them the validity of their marriage, page 043. In matrimonial matters, it is not always necessary to require the same degree of proof; if the matter is about contracting a marriage, even doubt or probability is considered in order to prevent it; but if the matter is about dissolving a marriage that has already been contracted and consummated, certain and conclusive proofs are required, ibid. Therefore, suspicions, conjectures, murmurings, and neighborhood rumors do not constitute full legal proof for dissolving a marriage that has already been contracted; and the validity of the marriage is often left in doubt; because matrimonial causes are favorable, ibid. Nor is the testimony of the spouses themselves to be given credence in the external forum, both because some may conspire with each other and easily confess to incest if they thought that the Church would clearly favor their wishes with its judgment; and because it is not so easy to give credence to someone who reveals their own wickedness, ibid. It is certain according to law that marriages are null and void that are contracted otherwise than in the presence of the Parish Priest, or another Priest with the license of the Parish Priest or Ordinary, in those places where the Council of Trent has been promulgated, page 674. Therefore, if the proper Parish Priest is prevented from being present at a marriage for any reason, another Priest must be delegated to it by the Parish Priest himself, or by the Ordinary; and the delegation refers to...

[*Latin ed. p. 742*]

742 In the INDEX GENERALIS, it is stated that only certain and defined persons are bound, so that the act of delegated authority may be effective, and not be vitiated by error, page 675. Conventual Mass. The Conventual Mass, according to the disposition of the sacred Canons, must be offered daily in the chapels of each cathedral and collegiate church for the benefit of the benefactors, page 106. By the best of laws, the Conventual Mass is included under the name of divine offices, and indeed is considered the principal part of the divine office, ibid. The eleemosyna (alms) of the Conventual Mass must be taken from the mass offerings, ibid. However, if there is a lack of mass offerings, it is the prudent judgment of the Bishop to provide for the stipend of such Masses, ibid. The celebration of the Conventual Mass follows from the daily morning office to which the Canons are bound, and is a part of it, page 231. Each Canon and dignity is bound to celebrate the Conventual Mass in turn, ibid. No agreements entered into by the Capitulars, or other ecclesiastical persons, concerning the dispensation or abrogation of the rights or statutes of any church, have any force without the consent of the Roman Pontiff, ibid. However, such agreements, entered into in good faith and with a valid title, are valid even without apostolic approval, if they have been prescribed for a long time, ibid. The Canons of cathedral and collegiate churches are bound daily to offer the Conventual

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Mass for the benefactors; nor may they be excused by a contrary custom, even if it is ancient, or by the holding of revenues, page 474. Mass for the People. Pastors to whom the care of souls has been entrusted are bound by divine law to offer the sacrifice for them, on Sundays and feast days, even if they are suppressed, page 38. Rectors who are in charge of two distinct parishes are bound to offer a double Mass on feast days, either by themselves, if they have the ability to do so, or by others if they lack that ability, or on another day of the week, notwithstanding the holding of revenues, ibid. Rectors cannot in any way refuse the obligation of offering the Mass for the people, neither by force of custom, nor for reasons of poverty, page 474. This obligation can be said to be both real and personal; so that if a canonical cause or necessity arises, by which the Rector cannot personally offer the Mass, he is bound to have it offered by another, ibid. This obligation presses upon Rectors on Sundays and feast days, and cannot be postponed to other days, unless for a legitimate reason, or by pontifical indult, ibid. By reason of the divine precept and pastoral office, and not by reason of congruity, or abundance, or scarcity, all pastors of souls are bound to offer and celebrate the Mass for the people on Sundays and feast days, even if they are abrogated, page 605. If a feast day assigned to a certain day is prevented by another feast of greater rank or dignity, the Rector is bound to offer the Mass for the people on the day to which the feast day has been transferred; he is also bound to offer such a Mass on the very feast day that is prevented, if only the office and the Mass are transferred, and not the feast day itself, ibid. It does not prevent another day of precept from occurring on the same day as the feast day from which another Mass would have to be offered; because from the

[*Latin ed. p. 743*]

INDEX C: A parochial act can satisfy the double precept; provided that everything prescribed by various laws is included in such an act, ibid. Thus, the obligation of the parish priest to offer the Mass for the people remains firm and immutable, by divine precept; so that if a parish priest presides over two parishes, he is obliged to offer two Masses, either by himself, if he has the ability to do so, or through another, or within the week, page 705. This obligation remains not only for those days which are still observed by the people, but also for feast days, despite the suppression by pontifical authority; and although the Christian people are excused by the Supreme Pontiffs from hearing the sacred services on those days, the pastors of souls are not excused from the obligation of offering the Mass for the people, page 700. This doctrine has been confirmed by numerous decrees of the Holy See, and especially by the Apostolic Authority of Benedict XIV; who does not admit as an excuse for failing to fulfill this obligation, either poverty of income, or a long-standing contrary custom, ibid. The parish priest is not obliged to offer two Masses, but only one, if he presides over two parishes

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which are so united and connected that they are effectively one, with the extinction of the title of the other, ibid. He who, even in good faith, believing that he is not bound by such an obligation, or for some reasonable cause, has not offered two Masses for the two populations to whom he ministers, must either offer the Masses he omitted, or request absolution from the Holy See for his past omissions, ibid. Sometimes, at the request of the local Ordinaries, the Holy See grants temporary dispensations to parish priests who administer two parishes and lack the ability to offer two Masses, so that they may offer only one Mass for both populations, ibid. However, the prayers of the Ordinaries are usually received favorably when serious circumstances are present, which cause the greatest difficulty for the parish priest in fulfilling this obligation, ibid. Regarding oblations and administration. The administration of oblations and alms, which are not destined for a specific purpose, belongs neither to the Bishop nor to the Chapter, but to the parish priest within whose parish boundaries they are collected, page 711. However, the parish priest is considered the legitimate administrator of alms and oblations which are given in any place within the parish boundaries for a certain and determined purpose, and he is only obligated to render an account of them to the Ordinary, ibid. Public oratory. An oratory is considered public, where it is found to have been consecrated by the minister and destined for divine worship, page 712. If there is no document to prove the publicity of an oratory, this can be proven by conjectures; the most important of which is if its door faces a public place, is open to all, and has a bell tower attached to it, ibid. It is not necessary that oratories located in the courtyards of palaces be considered public, when certain signs of publicity are present there, especially if some ecclesiastical benefice is founded in them, ibid. Among the signs by which it can be proven that a public oratory exists, even if it is in a courtyard...

[*Latin ed. p. 744*]

744 INDEX: A chapel situated within a palace is included, along with a bell and bell tower, which are permitted only in public oratories, as well as a fixed altar. The celebration of Mass on the titular feast day and on other solemn days, and the visitation of the same oratory by bishops, are also included therein. Private oratories are not subject to the visitation of ordinaries for the purpose of demanding procurations; however, the bishop may access them for the purpose of ascertaining their condition and decorum, either by direct visit, by notification, or by inquiry, ibid. Public oratories, although under the dominion and power of their patrons, cannot be alienated, nor can their status be altered by the will of these patrons, ibid. The parish priest with regard to the right of burial. All Catholic priests and laypersons who die without having chosen a burial place and without a family tomb are to be buried in their own parish, according to common law, page 462. Only those who hold a benefice with a right of residence, and a

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perpetual one at that, are exempt from this common law; however, even in the case of a cathedral, a separate and distinct burial place is provided for clerics and priests, ibid. Sometimes, the natural right of the parish is infringed by a custom to the contrary; provided that this custom has been introduced, prescribed, and proven by the one who alleges it, ibid. However, custom is of strict law; therefore, it has only as much power as it has usage and practice; and it cannot be extended from place to place, from person to person, or from case to case, ibid. Common law favors the parish priest, to whom it pertains to administer the sacraments and to perform burials within the limits of his parish, page 545. Royal residences, hospitals, and monasteries of nuns are exempt from this law, as they have a communication of privileges with them, ibid. By decree of the ordinary, even conservatories may be exempt from the jurisdiction of the parish priest, provided that there are serious reasons for it, page 546. Exemption is sometimes granted to persons living in communion who reside in a monastery that was formerly owned by a religious family, in whose own church, even with a change of personnel, the privilege of exemption remains fully intact, ibid. According to the opinion of many authors, the right of burial is acquired through the construction or extensive restoration of a church, reserving a quarter of the burials for the parish priest, ibid. Also, a quarter is reserved for burials if the deceased has chosen to be buried in a monastery, ibid. In matters of burial, fees cannot be received from those offerings which are made by a person or a pious society, motivated by their own works, for the deceased, page 619. The parish priest with regard to economics. The appointment of a parish economist during vacancies in parish churches, whatever the reason, pertains only to the bishop in whose diocese the vacant parish is located, page 134. The parish economist appointed by the bishop can delegate another priest to perform all duties, unless the will of the ordinary prevents it, ibid. The parish with regard to boundaries. The boundaries of parishes must be certain, determined, and immutable, page 161.

[*Latin ed. p. 745*]

The boundaries of parishes, not only by secular authority, but even by the Bishop himself, can be changed, except in cases permitted by law, ibid. Pensions. The decree only applies to pensions properly so called, and not to those which take the nature of ecclesiastical benefices, page 710. Pensions and benefices are very different: a pension, by its very nature, is precarious, because it is granted by the favor of some person; a benefice, on the other hand, once legitimately instituted, endures perpetually, ibid. Therefore, a pension expires with the life of the person burdened, or at most with the life of the pensioner; whereas, on the contrary, a benefice, upon the death of the beneficiary, does not cease, but becomes vacant until it is conferred again upon another, ibid. The congrua [ecclesiastical stipends] of the episcopal

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and parochial offices, established by the Council of Trent, must be fully maintained, ibid. Therefore, if any pensions are to be paid by Bishops or Rectors, they must be paid from those which exceed the congrua, with due regard to the proportion of burdens, ibid. Canonical possession. Canonical possession of a prebend must be received by the Canons, with the Chapter assembled collegially, in order that it may be considered valid and legitimate, page 22. Sometimes, the Holy See, for just reasons, grants a dispensation from receiving canonical possession, so that someone may enjoy the fruits of the prebend, ibid. Those with power regarding patronage. By the name "powers," are meant all those who have temporal jurisdiction in the place where the benefice is situated, page 10. 745 Delegated power. The nature of delegation derives from the act of will, by which the delegating party grants to another his own power or jurisdiction; therefore, such a transfer cannot in any way be perfected without the will of the delegating party; which will certainly is absent if there is error, because it is not presumed that one who errs intends to consent, page 675. Delegation, by its very nature, is strictly binding; therefore, if granted for one cause, or for one act, it cannot be extended to another, nor can it be exercised under the name of one person for the benefit of a different person, ibid. No act of delegation takes place if error or falsehood occurs in the final cause, which by its very nature so moves the one who disposes, that if that cause were absent, he would dispose otherwise, ibid. The Penitential Prebend concerning its erection. It is certain that Ordinaries possess the perpetual faculty of erecting a penitential prebend from among the prebends of their Cathedrals, as decreed by the Council of Trent: a Penitentiary is instituted by the Bishop, in conjunction with the prebend which is about to become vacant, page 357. No words of the Council of Trent express any exception regarding the quality and nature of the prebends; so that as soon as the Bishop designates one of them for the Penitentiary, the right to choose it loses all force, and the erection prevails, page 358. A prebend formally erected into a penitential prebend is considered as reserved and affected; no right to it remains to any of the older Canons; while, by law, it is permissible to choose a prebend that is free, not affected, and not reserved, ibid.

[*Latin ed. p. 746*]

INDEX c. It is not to be considered that a benefice must, by its very nature and by law, be offered first to one who is vacant, but it is entirely required that the action of the Ordinary be taken, who formally constitutes it for such an office, ibid. It cannot be denied that a Canon, above all others, can be appointed to the office of Penitentiary, when the formal erection precedes the vacancy; and since it often happens that the benefice offered by the last candidate is the least among all others; therefore, it is insufficient for the office of Penitentiary, which no one doubts is to be considered among the more distinguished and important offices, ibid. It is not lawful for the

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Ordinary to establish, in place of a benefice for the Penitentiary, certain simple benefices; although, according to the Doctors, the fruits of these benefices may be used to supplement the insufficiency of the same benefice, ibid. Although, by common acceptance, the union of a benefice regularly precedes a perpetual bond between the office and the benefice itself; nevertheless, if that benefice is meager and insufficient, the institution for the Penitentiary would not be greatly different, and for the sake of the Apostolic grace, it has been granted to some Penitentiaries to choose benefices, until they reach one of the more substantial ones, ibid. Theological Benefice. The Canon Theologian does not fully satisfy the requirements of his office and the institution of such an office unless he engages in the reading and interpretation of the Holy Scriptures; lest, as the Council of Trent says in Session V, Chapter 1, concerning the office of the Canon Theologian, that heavenly treasure of sacred books, which the Holy Spirit has generously given to men, be neglected and lie fallow, ibid. In no way is the Canon Theologian excused from the reading and interpretation of the Holy Scriptures, whether by lack of an audience, or by the poverty of his income, or by the custom of a certain place to the contrary, ibid. Nevertheless, there are not a few resolutions of the Holy Congregation, and many authors, who believe that the Canon Theologian can fulfill his office, whether he reads and interprets the Holy Scripture, or whether he lectures on Scholastic Theology, provided that it deals with questions of great importance and of great utility, ibid. Nor have there been lacking some Bishops who, by a Synodal decree, have ordered that the Canon Theologian sometimes give lectures on Holy Scripture and moral theology, especially in small towns, ibid. Presentation. The bad reputation of certain families does not prevent the institution of a candidate to a benefice, even a parochial one, provided that he is found capable and suitable by the Bishop, page 10. Religious Profession. No vow, whether solemn or simple, is valid, knowingly or unknowingly, unless the person has remained in the profession of simple vows for a full three years, page 48. To validly emit solemn vows after simple vows, an express profession is required, and therefore a tacit one is entirely invalid, page 49. A tacit profession cannot stand, not only by itself alone, but also if it follows an express profession that was previously not validly emitted, ibid. If it is doubtful whether a profession has been validly emitted or not, the presumption is in favor of liberty, ibid.

[*Latin ed. p. 747*]

INDEX C. Parochial Rights. The Church does not disapprove of parochial rights, or customs particular to a parish, unless they contradict established rights; indeed, she has sometimes tolerated and permitted them; she desires, moreover, that due consideration be given to the labors and burdens which each [parishioner] has borne (page 201). For this reason, when rights claim a benefit because of their office, the worker

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is worthy of his reward; he who serves the altar ought to live of the altar; the fruits of a benefice are to be divided equally among those who hold the benefice in the same year, and who bear its burdens (ibid.). Rescripts of the Supreme Pontiff. A rescript by which the Pope grants a benefice is to be considered fully valid (page 60). This is even more the case when the Pope acts by his own authority and through special grace (ibid.). Marriages. A mere proposal to enter into marriage does not, in itself, create an obligation of betrothal (page 316). To create such an obligation, it is necessary that there be a mutual expression of the promise of a future marriage, clearly expressed by some perceptible sign (ibid.). Rumors and common talk, unless other supporting evidence is present, are not sufficient to prove the existence of betrothal (ibid.). Betrothal, to be effective in creating an obligation, requires undeniable proof of a mutual and simultaneous promise made in the present (ibid.). Capitular Statutes. Capitular statutes, which have obtained Apostolic confirmation, have no validity to the extent that they exclude, by way of a rule, a certain class of persons from receiving ecclesiastical benefices, and to the extent that they are contrary to common law (page 515). A custom in a matter disapproved of by law, even if ancient, cannot abolish the law; nor can it be presumed that there is Apostolic approval in a disposition contrary to law (ibid.). Suspension. A bishop may, for a reason known to himself, forbid a cleric from exercising sacred functions; nor is he obliged to disclose the reason for the suspension, either to the person suspended, but only to the Apostolic See, in the case where the suspended person appeals to it (page 553). Suspension can be considered in two ways with regard to its application: either as a censure, or as a penalty; as a censure, warnings are absolutely necessary; as a penalty, they are by no means necessary (ibid.). From the teaching of the Sacred Congregation, it has been confirmed on several occasions that the bishop can pursue a hidden debt, even if public sins are mixed with it, by virtue of the decree of the Council of Trent, Session 14, chapter 1 (ibid.). The Will of a Testator. The will of a pious testator has the force of a law that must be observed in a holy and religious manner; and no one, except the Supreme Pontiff, can derogate from it (page 575). The Roman Pontiff, as Supreme Legislator, sometimes changes the will of a testator; but these changes must, according to the Council of Trent, be made only for a just and necessary reason (page 576). The will of pious founders, if it is less clear in some detail, can also be understood from reasonable considerations.

[*Latin ed. p. 748*]

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by a long-standing prior application; or even from the dangers and inconveniences which, if the prior interpretation were abandoned, would arise

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(ibid. The division of Ecclesiastical Unions. The power to unite churches, especially those that are dependent, belongs, according to the law, only to the Roman Pontiff and to Bishops, page 526. According to the Council of Trent, Bishops have the power to appoint priests as coadjutors to the pastors of churches if the people are numerous, so that one pastor cannot sufficiently administer the ecclesiastical sacraments and perform divine worship, ibid. Bishops also have the power to establish new parishes, if the parishioners are unable, due to some serious obstacle, to access, without great inconvenience, the sacraments and the divine services, ibid. In order that a division be made according to the law, besides other formalities, an absolute just cause is required, in order to avoid any danger to souls, which often arises from distance or the difficulty of travel, page 527. Although the inconveniences of distance and the difficulty of travel can be mitigated by coadjutors, nevertheless, according to some Doctors, a new parish is more fully established by its erection; and this was the intention of the Council of Trent in cases of great benefit, ibid. Unions or divisions of benefices, especially parochial ones, carried out solely by secular authority, are null and void in ecclesiastical law, ibid. Sacred Utensils. Rectors of parishes, and other principal churches, who receive the fruits of their churches, are bound, after providing for proper sustenance, to provide for the sacred utensils for those same churches, page 32. If a church is granted as a chapel to a parish, the use of the organ, bells, and confessional seat is also considered to belong to the same, along with the burden of maintenance pertaining to the pastor, ibid.

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